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The President

Proclamation 7662 of April 10, 2003

Education and Sharing Day, U.S.A., 2003

By the President of the United States of America

A Proclamation

As a Nation, we must work to ensure that all our children have the opportunity to reach their full potential and achieve their dreams. On Education and Sharing Day, U.S.A., 2003, we renew our commitment to providing quality education and to teaching our children the values that prepare them for lives as good neighbors and citizens.

Education has always been one of our Nation's top priorities. We place great reliance and confidence in our public education system, recognizing that it is one of the most important institutions of our free society. By helping our young citizens learn and develop skills, education has spurred our progress and prosperity, driven our Nation's economy, and enriched our culture.

Over the last 2 years, my Administration has taken significant action to transform public education in America. In one of the most comprehensive reforms ever passed, the No Child Left Behind Act of 2001 strengthened our school systems and affirmed our fundamental belief in the promise of every child. By raising expectations and insisting on results, we can make a difference in the lives of all our children.

As part of our commitment to our children's future, we must also teach young Americans to live lives of integrity and purpose, and to realize the importance of loving others and contributing to their communities. These values are first learned within the family, but all of our citizens, and especially our teachers, can support parents in the character education of our children. By guiding young people to understand universal values such as tolerance, honesty, commitment to family, service to others, and respect for the dignity of every life, our schools and communities can help our Nation fulfill its great potential.

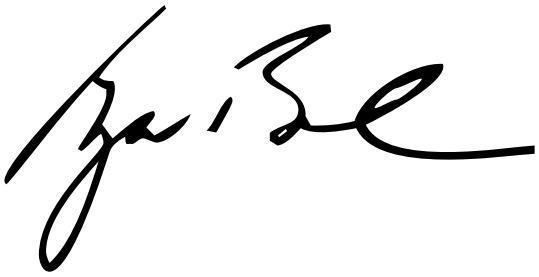
For the past 19 years, on the anniversary of his birth, we have recognized the contributions of the Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe who was instrumental in establishing numerous educational, social, and rehabilitative institutions. The Rebbe believed that education is critical in cultivating the moral character of students. He lived what he said: ''A single good deed on your part could transform the world.''

Today in the United States, there is a growing momentum of acts of kindness. Across our country, millions of Americans are helping to reinforce a culture of service, citizenship, and responsibility, and are applying the compassion of America to our biggest problems and deepest wounds. To build on these successes, we must instill these values in our next generation of leaders. Amidst a world of challenges, we can equip our children to carry our Nation into a future of promise and possibility for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 13, 2003, as Education and Sharing Day, U.S.A. I call upon all Americans to invest in our Nation's future by helping our children understand the importance

of character and provide them the knowledge and values necessary to succeed.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–1096]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) has adopted a final rule that amends its ''Rules Regarding Equal Opportunity,'' which establishes programs and procedures to promote equal opportunity for Board employees. This rule was published on January 25, 2001, in the **Federal Register** as an immediately effective interim rule with opportunity for public comment. The Board received one public comment on this rule. The Board is now adopting the interim rule as a final rule with substantive changes to sections in the rule that address the Rehabilitation Act. These substantive changes are being made because after the Board adopted its interim rule, the Equal Employment Opportunity Commission (Commission), after public comment, adopted changes to the provisions in its parallel regulation entitled ''Federal Sector Equal Employment Opportunity,'' 29 CFR part 1614, that address the Rehabilitation Act. The substantive changes to the Board's final rule, which incorporates changes to the Commission's regulation on the Rehabilitation Act, also respond to the comment that the Board received on its rule.

DATES: This final rule is effective immediately and applies to all Board equal employment opportunity (EEO) complaints pending at any stage of the administrative process as of April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Assistant General Counsel (202–452–3920), or Alicia S. Foster, Counsel (202–452–5289), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: On January 2, 2001, the Board approved the revision of the Board's ''Rules Regarding Equal Opportunity'' as an immediately effective interim rule with opportunity for comment. The rule was published in the **Federal Register** on January 25, 2001 (66 FR 7703). The interim rule revised the Board's existing regulation entitled ''Rules on Equal Opportunity,'' 12 CFR part 268, to incorporate the November 1999 changes made by the Equal Employment Opportunity Commission (Commission) to its parallel regulation entitled ''Federal Sector Equal Employment Opportunity,'' 29 CFR part 1614, governing equal employment opportunity in the federal government generally. As explained in the preamble to the interim rule, this amendment is consistent with the Board's past practice as the Board's rule is modeled after and, in most respects, is identical to the Commission's regulation. The interim rule also made additional changes to the Board's regulation to bring it into closer conformance with the Commission's regulation. In a few instances, the interim rule continued distinctions between the Board's rule and the Commission's rule that reflect the Board's statutorily mandated independence.

One comment was received. The commentator, the Commission, suggested that rather than adopt a separate regulation governing the processing of complaints of discrimination, the Board should adopt the Commission's Government-wide complaint processing procedures. As the Board has pointed out in prior amendments to part 268, however, the Board believes that based on the specific provisions of the Federal Reserve Act and established precedent, the adoption of part 268 is necessary to authorize and ensure the Board's compliance with important national laws and policies prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, disability, or retaliation.

The Commission also questioned five provisions in the Board's rule that differ from the corresponding provisions in the Commission's rule on employee EEO complaints. Three of the provisions retain authority for the Board as to a decision issued by the Commission on employee complaints of discrimination. The Commission expressed concerns that it is not clear how these provisions relate to the Commission's rule or to the sections in the interim rule that set forth the time periods for a complainant to file a civil action. The other two provisions regard the overall relationship between the Commission and the Board and address how the Board will provide EEO program information to the Commission. Except as discussed below, the Board adopts the interim rule as a final rule.

As an initial matter, it should be noted that all of the provisions that the Commission points to as differing from its regulation are updated provisions rather than new provisions. Similar provisions were contained in the Board's rule on equal opportunity prior to the adoption of the interim rule on January 25, 2001. While the Board recognizes that the provisions in question retain authority that is not found in the Commission's regulation, the Board believes the retention of authority is necessary to comply with its statutorily mandated independence while also complying with the laws prohibiting discrimination in employment. The provisions at issue are based on the Board's traditional view of its authority under the Federal Reserve Act, which provides that the ''employment, compensation, leave, and expenses'' of Board employees is governed solely by that Act. Section 10(4).[1] The provisions address areas that the Board believes affect its independence and thus the distinctions are appropriate. As explained in the preamble to the interim rule, however, the Board has minimized, to the greatest extent possible, distinctions between its rule and the Commission's rule. Accordingly, with the few exceptions noted by the Commission, the Board's interim rule closely conforms to the Commission's rule. The Board will continue to work with the Commission

[1] 12 U.S.C. 244.

to ensure that the Board's rule is effectively implemented consistent with the laws and policies enforced by the Commission. Accordingly, the Board believes that no changes to these provisions in the interim rule are appropriate.

The Commission also commented on a provision in the Board's interim regulation implementing the Rehabilitation Act (29 U.S.C. 791), which prohibits discrimination against individuals with disabilities by the federal government. The particular provision at issue addresses alcoholism, 12 CFR 268.203(h)(3). The Commission questioned whether section 268.203(h)(3) was consistent with current law. Before the Board could address the Commission's concerns, however, the Commission adopted changes to the parallel provision in the Commission's rule. On May 21, 2002, the Commission published a final rule revising the sections in its rule regarding the Rehabilitation Act. (67 FR 35732). The Commission's rule provides that the federal government shall be a model employer of individuals with disabilities. The rule also provides that in determining whether the Rehabilitation Act, as amended, has been violated in a complaint alleging nonaffirmative action employment discrimination, the standards under Titles I and V of the Americans with Disabilities Act of 1990, insofar as they cover employment in the private sector, shall be applied. The rules also provide that these standards are set forth in the Commission's ADA regulation at 29 CFR part 1630. The Board has determined that it would be appropriate to revise its Rehabilitation Act rules consistent with the Commission's May 21, 2002, final rule. By making these changes, the Board is addressing the Commission's concern with the provision on alcoholism in the interim rule as that provision will be deleted.

In order to incorporate the Commission's May 21, 2002, final rule, section 268.102, paragraph (9) of the interim rule, which relates to the obligations of the Board's EEO program with respect to employees with physical or mental limitations, has also been deleted in the final rule. This provision corresponds to a provision in the Commission's prior regulation, which the Commission deleted.[2] In addition, the present language in section 268.203 has been replaced with the corresponding language from the Commission's final rule, which provides that the government shall be a model employer of individuals with disabilities and applies the ADA standards (Title I and V) to determine whether a violation of section 501 of the Rehabilitation Act has occurred. The Board's final rule also incorporates the reference to the Commission's ADA regulation. Thus, as these changes to the Board's rules are made in response to the comment received on the interim rule and are consistent with those made by the Commission in its May 21, 2002, final rule, additional comment would not serve the public interest as the Commission's rule was adopted only after public comment. As described above, the changes to the Rehabilitation Act provisions in the Board's corresponding rule incorporate existing Commission procedures which were adopted after public notice and comment. Further, as the Commission's changes to the Rehabilitation Act provisions are effective as of June 20, 2002, to ensure that EEO complaints by Board employees are handled consistently with the procedures of the Commission, it is important that the Board adopt corresponding changes without additional delay.

Finally, the Commission suggested that the Board apply the interim rule retroactively to cover employee complaints of discrimination pending on November 9, 1999, the effective date of the Commission's revised rule, which prompted the Board's revision of its corresponding rule. The Board does not believe that any further action in this regard is necessary, however, because the interim rule was effective immediately upon publication of the interim rule and applied to all pending cases as of January 25, 2001. Thus, to the extent an EEO complaint was in the administrative process on that date, it was processed under procedures similar to those adopted by the Commission. It appears that, for the most part, the administrative processing at the Board of complaints pending as of January 2001 has been completed, so that retroactive application at this time would have little effect.

Accordingly, with the exception of the substantive changes discussed above, the Board is now adopting the interim rule on equal employment opportunity as a final rule. No other substantive changes have been made to the interim rule. The final rule makes editorial changes to certain other parts of the Board's interim regulation, namely, the provision on employment of noncitizens and the subpart prohibiting discrimination in Board programs and activities on the basis of disability, which are not administered by the Commission.

Pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), the Board has determined that it is unnecessary and would be impracticable to defer the effective date of this final rule for 30 days. The final rule, like the interim rule, which was effective immediately on publication, in substance is applying the Commission's existing regulation, which was revised twice and in both instances adopted only after notice and public comment. Thus, the Board's rule will not cause unfair prejudice as the standards that are being applied in the final rule in virtually all respects are not new and are already in effect under the interim rule. The one major substantive change to the interim rule by the final rule conforms the Rehabilitation Act provisions covering Board employee to those governing Federal employers generally.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs the Board's dealings with its employees, applicants for employment, and others affected in a like manner.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Because the Board has determined that this final rule, similar to the interim rule, should conform to the greatest possible with the parallel regulation of the Equal Employment Opportunity Commission, the Board's ability to specifically address the plain language requirement was limited.

[2] The Board's final rule, similar to the Commission's changes to its regulation, renumbers the remaining paragraphs. Further, the citation to section 268.203(a)(6) in section 268.702(e)(3) of Subpart H, which prohibits discrimination in Board programs and activities on the basis of disability and which is a matter not administered by the Commission, has been changed to section 268.203 as the prior citation is no longer valid.

List of Subjects in 12 CFR part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

■ For the reasons set out in the preamble, the Board revises 12 CFR part 268 to read:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

Subpart A—General Provisions and Administration

Sec.
268.1 Authority, purpose and scope.
268.2 Definitions.

Subpart B—Board Program To Promote Equal Opportunity

268.101 General policy for equal opportunity.
268.102 Board program for equal employment opportunity.
268.103 Complaints of discrimination covered by this part.
268.104 Pre-complaint processing.
268.105 Individual complaints.
268.106 Dismissals of complaints.
268.107 Investigation of complaints.
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268.109 Final action by the Board.

Subpart C—Provisions Applicable to Particular Complaints

268.201 Age Discrimination in Employment Act.
268.202 Equal Pay Act.
268.203 Rehabilitation Act.
268.204 Class complaints.
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268.301 Negotiated grievance procedure.
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268.401 Appeals to the Equal Employment Opportunity Commission.
268.402 Time for appeals to the Equal Employment Opportunity Commission.
268.403 How to appeal.
268.404 Appellate Procedure.
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268.406 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.
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268.408 Effect of filing a civil action.

Subpart F—Remedies and Enforcement

268.501 Remedies and relief.
268.502 Compliance with final Commission decisions.
268.503 Enforcement of final EEOC decisions.
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Subpart G—Matters of General Applicability

268.601 EEO group statistics.
268.602 Reports to the Commission.
268.603 Voluntary settlement attempts.
268.604 Filing and computation of time.
268.605 Representation and official time.
268.606 Joint processing and consolidation of complaints.
268.607 Delegation of Authority.

Subpart H—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Disability

268.701 Purpose and application.
268.702 Definitions
268.703 Notice.
268.704 General prohibition against discrimination.
268.705 Employment.
268.706 Program accessibility: Discrimination prohibited.
268.707 Program accessibility: Existing facilities.
268.708 Program accessibility: New construction and alterations.
268.709 Communications.
268.710 Compliance procedures.

Authority: 12 U.S.C. 244 and 248(i), (k) and (1).

Subpart A—General Provisions and Administration

§ 268.1 Authority, purpose and scope.

(a) *Authority.* The regulations in this part (12 CFR part 268) are issued by the Board of Governors of the Federal Reserve System (Board) under the authority of sections 10(4) and 11(i), (k), and (l) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(i), (k) and (1)).

(b) *Purpose and scope.* This part sets forth the Board's policy, program and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental disability. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of physical or mental disability in programs and activities conducted by the Board. It also specifies the circumstances under which the Board will hire or decline to hire persons who are not citizens of the United States, consistent with the Board's operational needs and applicable law.

§ 268.2 Definitions.

The definitions contained in this section shall have the following meanings throughout this part unless otherwise stated.

(a) *Commission or EEOC* means the Equal Employment Opportunity Commission.

(b) *Title VII* means Title VII of the Civil Rights Act (42 U.S.C. 2000e *et seq.*).

Subpart B—Board Program To Promote Equal Opportunity

§ 268.101 General policy for equal opportunity.

(a) It is the policy of the Board to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability, and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), or the Rehabilitation Act (29 U.S.C. 791 *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

§ 268.102 Board program for equal employment opportunity.

(a) The Board shall maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of this program, the Board shall:

(1) Provide sufficient resources to its equal opportunity program to ensure efficient and successful operation;

(2) Provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission's Management Directives;

(3) Conduct a continuing campaign to eradicate every form of prejudice or discrimination from the Board's personnel policies, practices and working conditions;

(4) Communicate the Board's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age or disability, and solicit their recruitment assistance on a continuing basis;

(5) Review, evaluate and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training and advice to managers and supervisors to assure their understanding and implementation of the equal

employment opportunity policy and program;

(6) Take appropriate disciplinary action against employees who engage in discriminatory practices;

(7) Make reasonable accommodation to the religious needs of employees and applicants for employment when those accommodations can be made without undue hardship on the business of the Board;

(8) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with a disability unless the accommodation would impose an undue hardship on the operations of the Board's program;

(9) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(10) Establish a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort;

(11) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(12) Inform its employees and recognized labor organizations of the Board's affirmative equal opportunity policy and program and enlist their cooperation; and

(13) Participate at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

(b) In order to implement its program, the Board shall:

(1) Develop the plans, procedures and regulations necessary to carry out its program;

(2) Establish or make available an alternative dispute resolution program. Such program must be available for both the precomplaint process and the formal complaint process.

(3) Appraise its personnel operations at regular intervals to assure their conformity with the Board's program, this part 268 and the instructions contained in the Commission's management directives;

(4) Designate a Director for Equal Employment Opportunity (EEO Programs Director), EEO Officer(s), and such Special Emphasis Program Managers/Coordinators (*e.g.,* People with Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the Board and at all Board installations. The EEO Programs Director shall be under the immediate supervision of the Chairman.

(5) Make written materials available to all employees and applicants informing them of the variety of equal employment opportunity programs and administrative and judicial remedial procedures available to them and prominently post such written materials in all personnel and EEO offices and throughout the workplace;

(6) Ensure that full cooperation is provided by all Board employees to EEO Counselors and Board EEO personnel in the processing and resolution of pre-complaint matters and complaints within the Board and that full cooperation is provided to the Commission in the course of appeals, including, granting the Commission routine access to personnel records of the Board when required in connection with an investigation;

(7) Publicize to all employees and post at all times the names, business telephone numbers and business addresses of the EEO Counselors (unless the counseling function is centralized, in which case only the telephone number and address need be publicized and posted), a notice of the time limits and necessity of contacting a Counselor before filing a complaint and the telephone numbers and addresses of the EEO Programs Director, EEO Officer(s) and the Special Emphasis Program Managers/Coordinators.

(c) The EEO Programs Director shall be responsible for:

(1) Advising the Board of Governors with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports and other matters pertaining to the policy in § 268.101 and the Board's program;

(2) Evaluating from time to time the sufficiency of the total Board program for equal employment opportunity and reporting to the Board of Governors with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(3) When authorized by the Board of Governors, making changes in programs and procedures designed to eliminate discriminatory practices and to improve the Board's program for equal employment opportunity;

(4) Providing for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination; and

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

(d) Directives, instructions, forms and other Commission materials referenced in this part may be obtained in accordance with the provisions of 29 CFR 1610.7.

§ 268.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved person is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), or the Equal Pay Act (sex-based wage discrimination) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

(b) This part applies to all Board employees and applicants for employment at the Board, and to all employment policies or practices affecting Board employees or applicants for employment.

(c) This part does not apply to Equal Pay Act complaints of employees whose services are performed within a foreign country or certain United States territories as provided in 29 U.S.C. 213(f).

§ 268.104 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

(2) The Board or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his

or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the Board or the Commission.

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the Board in accordance with § 268.107(f), election rights pursuant to § 268.302, the right to file a notice of intent to sue pursuant to § 268.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. Counselors must advise individuals of their duty to keep the Board and the Commission informed of their current address and to serve copies of appeal papers on the Board. The notice required by paragraphs (d) or (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs the Counselor that he or she wishes to file a class complaint, the Counselor shall explain the class complaint procedures and the responsibilities of a class agent.

(2) Counselors shall advise aggrieved persons that, where the Board agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

(c) Counselors shall conduct counseling activities in accordance with instructions contained in Commission Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the EEO Programs Director and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the Board's EEO Programs Office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

(g) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.105 Individual complaints.

(a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

(b) A complaint must be filed within 15 days of receipt of the notice required by § 268.104 (d), (e) or (f).

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved individual and the Board and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The Board shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The Board shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The Board is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the Board shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

§ 268.106 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the Board shall dismiss an entire complaint:

(1) That fails to state a claim under § 268.103 or § 268.105(a), or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.104, 268.105 and 268.204(c), unless the Board extends the time limits in accordance with § 268.604(c), or that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) Where a complainant has raised the matter in an appeal to the Merit Systems Protection Board and § 268.302 indicates that the complainant has elected to pursue the non-EEO process;

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(6) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address;

(7) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the Board, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the Board's in-house administrative processes or overburdening the EEO complaint system.

(b) Where the Board believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the Board shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ 268.107 Investigation of complaints.

(a) The investigation of complaints filed against the Board shall be conducted by the Board.

(b) In accordance with instructions contained in Commission Management Directives, the Board shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The Board may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The Board may incorporate alternative dispute resolution techniques into its investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the Board, and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances.

(e)(1) The Board shall complete its investigation within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to § 268.106. By written agreement within those time periods, the complainant and the Board may voluntarily extend the time period for not more than an additional 90 days. The Board may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the Board notifies the complainant of the extension.

(2) Confidential supervisory information, as defined in 12 CFR 261.2(c), and other confidential information of the Board may be included in the investigative file by the investigator, the EEO Programs Director, or another appropriate officer of the Board, where such information is relevant to the complaint. Neither the complainant nor the complainant's personal representative may make further disclosure of such information, however, except in compliance with the Board's Rules Regarding Availability of Information, 12 CFR part 261, and where applicable, the Board's Rules Regarding Access to Personal Information under the Privacy Act of 1974, 12 CFR part 261a.

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 268.109(b) from the Board.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Board's

acknowledgment letter. The complainant shall send a copy of the request for a hearing to the Board's EEO Programs Office. Within 15 days of receipt of the request for a hearing, the Board's EEO Programs Office shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

§ 268.108 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to § 268.106, on their own initiative, after notice to the parties, or upon the Board's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the Board may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the Board may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Board's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, the Board may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the Board's final decision, or the Commission's decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the Board of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, the Board may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(d) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(e) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct.

(f) *Procedures.* (1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative judge deems necessary. The administrative judge shall serve all orders to produce evidence on both parties.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Decisions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in paragraph (g)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a

hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

(h) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the Board. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If the Board does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with § 268.109(a), then the decision of the administrative judge shall become the final action of the Board.

§ 268.109 Final action by the Board.

(a) *Final action by the Board following a decision by an administrative judge.* When an EEOC administrative judge has issued a decision under §§ 268.108(b), (g), or (i), the Board shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the Board will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the Board shall simultaneously file an appeal in accordance with § 268.403 and append a copy of its appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by the Board in all other circumstances.* When the Board dismisses an entire complaint under § 268.106, receives a request for an immediate final decision or does not receive a reply to the notice issued under § 268.107(f), the Board shall take final action by issuing a final decision. The final decision shall consist of findings by the Board on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart F of this part. The Board shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the Board, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the final action. The Board may issue a final decision within 30 days after receiving a decision of the Commission pursuant to § 268.405(c) of this part.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.201 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint under this part, an aggrieved individual may file a civil action in a United States district court under the ADEA against the Chairman of the Board of Governors after giving the Commission not less than 30 days' notice of the intent to file such an action. Such notice must be filed in writing with EEOC, at PO Box 19848, Washington, DC 20036, or by personal delivery or facsimile within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

(c) When an individual has filed an administrative complaint alleging age discrimination that is not a mixed case, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not taken final action and the individual has not filed an appeal or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After final action on an individual or class complaint if the individual has not filed an appeal; or

(3) After the issuance of a final decision by the Commission on an appeal or 180 days after the filing of an appeal, if the Commission has not issued a final decision.

§ 268.202 Equal Pay Act.

Complaints alleging violations of the Equal Pay Act shall be processed under this part.

§ 268.203 Rehabilitation Act.

(a) *Model employer.* The Board shall be a model employer of individuals with disabilities. The Board shall give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.

(b) *ADA standards.* The standards used to determine whether section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), has been violated in a complaint alleging nonaffirmative action employment discrimination under this part shall be the standards applied under Titles I and V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, 12111, 12201), as such sections relate to employment. These standards are set forth in the Commission's ADA regulation at 29 CFR part 1630.

§ 268.204 Class complaints.

(a) *Definitions*—(1) *Class* is a group of Board employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by a Board personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or disability.

(2) *Class complaint* is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are typical of the claims of the class;

(iv) The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

(3) An *agent of the class* is a class member who acts for the class during the processing of the class complaint.

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 268.104. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 268.104, no additional counseling is required. The administrative judge shall deny class certification when the complainant has unduly delayed in moving for certification.

(c) *Filing and presentation of a class complaint.* (1) A class complaint must be signed by the agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class agent.

(2) The complaint must be filed with the Board not later than 15 days after the agent's receipt of the notice of right to file a class complaint.

(3) The complaint shall be processed promptly; the parties shall cooperate and shall proceed at all times without undue delay.

(d) *Acceptance or dismissal.* (1) Within 30 days of the Board's receipt of a complaint, the Board shall: Designate an agency representative who shall not be one of the individuals referenced in § 268.102(b)(4), and forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to an administrative judge or complaints examiner with a proper security clearance when necessary. The administrative judge may require the complainant or the Board to submit additional information relevant to the complaint.

(2) The administrative judge may dismiss the complaint, or any portion, for any of the reasons listed in § 268.106 or because it does not meet the prerequisites of a class complaint under § 268.204(a)(2).

(3) If an allegation is not included in the Counselor's report, the administrative judge shall afford the agent 15 days to state whether the matter was discussed with the Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall dismiss the allegation. If the explanation is satisfactory, the administrative judge shall refer the allegation to the Board for further counseling of the agent. After counseling, the allegation shall be consolidated with the class complaint.

(4) If an allegation lacks specificity and detail, the administrative judge shall afford the agent 15 days to provide specific and detailed information. The administrative judge shall dismiss the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the administrative judge shall advise the agent how to proceed on an individual or class basis concerning these allegations.

(5) The administrative judge shall extend the time limits for filing a complaint and for consulting with a Counselor in accordance with the time limit extension provisions contained in §§ 268.104(a)(2) and 268.604.

(6) When appropriate, the administrative judge may decide that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the Board and the agent. The Board shall take final action by issuing a final order within 40 days of receipt of the hearing record and administrative judge's decision. The final order shall notify the agent whether or not the Board will implement the decision of the administrative judge. If the final order does not implement the decision of the administrative judge, the Board shall simultaneously appeal the administrative judge's decision in accordance with § 268.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart B or that the complaint is also dismissed as an individual complaint in accordance with § 268.106. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) *Notification.* (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the Board shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

(2) Such notice shall contain:

(i) An identification of the Board as the named agency, its location, and the date of acceptance of the complaint;

(ii) A description of the issues accepted as part of the class complaint;

(iii) An explanation of the binding nature of the final decision or resolution of the class complaint on class members; and

(iv) The name, address and telephone number of the class representative.

(f) Obtaining evidence concerning the complaint. (1) The administrative judge shall notify the agent and the Board's representative of the time period that will be allowed both parties to prepare their cases. This time period will include at least 60 days and may be extended by the administrative judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be

established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To recommend that a decision be entered in favor of the opposing party; or

(v) To take such other actions as the administrative judge deems appropriate.

(3) During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the class complaint or any portion be conducted by an agency certified by the Commission.

(4) Both parties shall furnish to the administrative judge copies of all materials that they wish to be examined and such other material as may be requested.

(g) *Opportunity for resolution of the complaint.* (1) The administrative judge shall furnish the agent and the Board's representative a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss the materials with the Board's representative and attempt resolution of the complaint.

(2) The complaint may be resolved by agreement of the Board and the agent at any time pursuant to the notice and approval procedure contained in paragraph (g)(4) of this section.

(3) If the complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent and the Board.

(4) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by the Board and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

(h) *Hearing.* On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for hearing. The hearing shall be conducted in accordance with 12 CFR 268.108(a) through (f).

(i) *Report of findings and recommendations.* (1) The administrative judge shall transmit to the Board a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.

(2) If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

(3) The administrative judge shall notify the agent of the date on which the report of findings and recommendations was forwarded to the Board.

(j) *Board decision.* (1) Within 60 days of receipt of the report of findings and recommendations issued under § 268.204(i), the Board shall issue a final decision, which shall accept, reject, or modify the findings and recommendations of the administrative judge.

(2) The final decision of the Board shall be in writing and shall be transmitted to the agent by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

(3) When the Board's final decision is to reject or modify the findings and recommendations of the administrative judge, the decision shall contain specific reasons for the Board's action.

(4) If the Board has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, those findings and recommendations shall become the final decision. The Board shall transmit the final decision to the agent within five days of the expiration of the 60-day period.

(5) The final decision of the Board shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

(6) The final decision on a class complaint shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(7) The final decision shall inform the agent of the right to appeal or to file a civil action in accordance with subpart E of this part and of the applicable time limits.

(k) *Notification of decision.* The Board shall notify class members of the final decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 days of the transmittal of its final decision to the agent.

(1) *Relief for individual class members.* (1) When discrimination is found, the Board must eliminate or modify the employment policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent in accordance with § 268.501.

(2) When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, § 268.501 shall apply. The Board shall also, within 60 days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by § 268.105(d) and process in accordance with the provisions of subpart B of this part, each individual complaint that was subsumed into the class complaint.

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Board or the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The Board must show by clear and convincing evidence that any class

member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The Board or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. The Board shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with subpart E of this part and the applicable time limits.

§ 268.205 Employment of noncitizens.

(a) *Definitions.* The definitions contained in this paragraph (a) shall apply only to this section.

(1) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(i) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(ii) Has evidenced an intention to become a United States citizen.

(2) *Noncitizen* means any person who is not a citizen of the United States.

(3) *Sensitive information* means:

(i)(A) Information that is classified for national security purposes under Executive Order No. 12356 (3 CFR, 1982 Comp., p. 166), including any amendments or superseding orders that the President of the United States may issue from time to time;

(B) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(c); or

(C) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

(ii) For purposes of paragraph (a)(3)(i)(C) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(4) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

(b) *Prohibitions*—(1) *Unauthorized aliens.* The Board shall not hire any person unless that person is able to satisfy the requirements of Section 101 of the Immigration Reform and Control Act of 1986.

(2) *Employment in sensitive positions.* The Board shall not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(3) *Preference.* Consistent with the Immigration Reform and Control Act of 1986, and other applicable law, applicants for employment at the Board who are citizens of the United States shall be preferred over equally qualified applicants who are not United States citizens.

(c) *Exception.* The prohibition of paragraph (b)(2) of this section does not apply to hiring for positions for which a security clearance is required under Executive Order No. 10450, including any subsequent amendments or superseding orders that the President of the United States may issue from time to time, where the noncitizen either has or can obtain the necessary security clearance. Any offer of employment authorized by this paragraph (c) shall be contingent upon receipt of the required security clearance in the manner prescribed by law.

(d) *Applicability.* This section applies to employment in all positions at the Board and to employment by Federal Reserve Banks of examiners who must be appointed, or selected and approved by the Board pursuant to 12 U.S.C. 325, 326, 338, or 625.

Subpart D—Related Processes

§ 268.301 Negotiated grievance procedure.

When an employee of the Board, which is not an agency subject to 5 U.S.C. 7121(d), is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for processing the complaint contained in § 268.105 and for appeal to the Commission contained in § 268.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the Board notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

§ 268.302 Mixed case complaints.

A *mixed case complaint* is a complaint of employment discrimination filed with the Board based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit System Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. A *mixed case appeal* is an appeal filed with the MSPB that alleges that an appealable Board action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability or age. Only a Board employee who is a preference eligible employee as defined by the Veterans Preference Act can file a mixed case complaint with the Board or a mixed case appeal with the MSPB. A mixed case complaint or mixed case appeal may only be filed for action(s) over which the MSPB has jurisdiction. The Board will apply sections 1614.302 to 1614.310 of 29 CFR to the processing of a mixed case complaint or mixed case appeal.

Subpart E—Appeals to the Equal Employment Opportunity Commission

§ 268.401 Appeals to the Equal Employment Opportunity Commission.

(a) A complainant may appeal the Board's final action or dismissal of a complaint.

(b) The Board may appeal as provided in § 268.109(a).

(c) A class agent or the Board may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Board may appeal a final decision on a petition pursuant to § 268.204(g)(4).

(d) A complainant, agent of the class or individual class claimant may appeal to the Commission the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504.

§ 268.402 Time for appeals to the Equal Employment Opportunity Commission.

(a) Appeals described in § 268.401(a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 268.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the Board's EEO Programs Director of alleged noncompliance with a settlement agreement in accordance

with § 268.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30-day time period provided in paragraph (a) of this section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

§ 268.403 How to appeal.

(a) The complainant, the Board, agent or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at PO Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Board in support of its appeal must be submitted to the Office of Federal Operations within 20 days filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The Board must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the Board.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

§ 268.404 Appellate Procedure.

(a) On behalf of the Commission, the Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information to the other party.

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

§ 268.405 Decisions on appeals.

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 268.106, 268.403(c) and 268.408. The decision on an appeal from the Board's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 268.108(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the Board by first class mail.

(b) A decision issued under paragraph (a) of this section is final, subject to paragraph (c) of this section, within the meaning of § 268.406 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the Board.

(c) The Board, within 30 days of receiving the decision of the Commission, shall issue a final decision based upon that decision.

§ 268.406 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under title VII, the ADEA and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 days of receipt of the Commission's final decision on an appeal; or

(d) After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

§ 268.407 Civil action: Equal Pay Act.

A complainant is authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

§ 268.408 Effect of filing a civil action.

Filing a civil action under §§ 268.406 or 268.407 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an

appeal, the parties are requested to notify the Commission in writing.

Subpart F—Remedies and Enforcement

§ 268.501 Remedies and relief.

(a) When the Board, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the Board shall provide full relief which shall include the following elements in appropriate circumstances:

(1) Notification to all employees of the Board in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found unlawful will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the Board shall cease from engaging in the specific unlawful employment practice found in the case.

(b) *Relief for an applicant.* (1)(i) When the Board, or the Commission, finds that an applicant for employment has been discriminated against, the Board shall offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed in 5 CFR 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The individual shall be deemed to have performed service for the Board during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(iii) If the offer of employment is declined, the Board shall award the individual a sum equal to the back pay he or she would have received, computed in the manner prescribed in 5 CFR 550.805, from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation. The Board shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

(2) When the Board, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but also finds by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the Board shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this paragraph (b) for complaints under title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

(c) *Relief for an employee.* When the Board, or the Commission, finds that an employee of the Board was discriminated against, the Board shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed in 5 CFR 550.805, unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Board shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Board's records of any adverse materials relating to the discriminatory employment practice.

(5) Full opportunity to participate in the employee benefit denied (*e.g.*, training, preferential work assignments, overtime scheduling).

(d) The Board has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) *Attorney's fees or costs*—(1) *Awards of attorney's fees or costs.* The provisions of this paragraph relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by title VII and the Rehabilitation Act. In a decision or final action, the Board, administrative judge, or Commission may award the applicant or employee or reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.

(ii) Any award of attorney's fees or costs shall be paid by the Board.

(iii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Board, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. The Board is not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after the Board takes final action by not implementing an administrative judge's decision. Written submissions to the

Board that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.* (i) When the Board, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the Board or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the Board. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The Board may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any Board response shall be made a part of the complaint file.

(ii)(A) The Board or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the Board.

(C) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

§ 268.502 Compliance with final Commission decisions.

(a) Relief ordered in a final Commission decision, if accepted pursuant to § 268.405(c) as a final decision, or not acted upon the Board within the time periods of § 268.405(c), is mandatory and binding on the Board except as provided in this section. Failure to implement ordered relief shall be subject to judicial enforcement as specified in § 268.503(f).

(b) Notwithstanding paragraph (a) of this section, when the Board requests reconsideration and the case involves removal, separation, or a suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the Board's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of this paragraph (b) shall be credited toward the completion of a probationary or trial period or the completion of the service requirement for career tenure, if the Commission upholds its decision after reconsideration.

(2) When the Board requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the Board delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the Board to make the payment, then the Board shall pay interest from the date of the original appellate decision until payment is made.

(3) The Board shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Board to provide notification will result in the dismissal of the Board's request.

(c) When no request for reconsideration is filed or when a request for reconsideration is denied, the Board shall provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 60 days after receipt of the final decision unless otherwise ordered in the decision.

§ 268.503 Enforcement of final EEOC decisions.

(a) *Petition for enforcement.* A complainant may petition the Commission for enforcement of a decision issued under the Commission's appellate jurisdiction. The petition shall be submitted to the Office of Federal Operations. The petition shall specifically set forth the reasons that lead the complainant to believe that the Board is not complying with the decision.

(b) *Compliance.* On behalf of the Commission, the Office of Federal Operations shall take all necessary action to ascertain whether the Board is implementing the decision of the Commission. If the Board is found not to be in compliance with the decision, efforts shall be undertaken to obtain compliance.

(c) *Clarification.* On behalf of the Commission, the Office of Federal Operations may, on its own motion or in response to a petition for enforcement or in connection with a timely request for reconsideration, issue a clarification of a prior decision. A clarification cannot change the result of a prior decision or enlarge or diminish the relief ordered but may further explain the meaning or intent of the prior decision.

(d) *Referral to the Commission.* Where the Director, Office of Federal Operations, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the Commission, or, as directed by the Commission, refer the matter to another appropriate agency.

(e) *Commission notice to show cause.* The Commission may issue a notice to the Chairman of the Board to show cause why there is noncompliance. Such notice may request the Chairman of the Board or a representative to appear before the Commission or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons for noncompliance.

(f) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that the Board is not complying with a prior decision, or where the Board has failed or refused to submit any required report of compliance, the Commission shall notify the complainant the right to file a civil action for enforcement of the decision pursuant to title VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Board's refusal to implement the ordered relief pursuant to the Administrative Procedures Act, 5 U.S.C. 701 *et seq.*, and the mandamus statute, 28 U.S.C. 1361, or to commence *de novo* proceedings pursuant to the appropriate statutes.

§ 268.504 Compliance with settlement agreements and final actions.

(a) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or a civil action shall be binding on the Board. If the complainant believes that the Board has failed to comply with the terms of a settlement agreement or decision, the complainant shall notify the Board's EEO Programs Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(b) The Board shall resolve the matter and respond to the complainant, in writing. If the Board has not responded to the complainant, in writing, or if the complainant is not satisfied with the Board's attempt to resolve the matter, the complainant may appeal to the Commission for a determination as to whether the Board has complied with the terms of the settlement agreement or decision. The complainant may file such an appeal 35 days after he or she has served the Board with the allegations of noncompliance, but must file an appeal within 30 days of his or her receipt of the Board's determination. The complainant must serve a copy of the appeal on the Board and the Board may submit a response to the Commission within 30 days of receiving notice of the appeal.

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it deems necessary or may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under §§ 268.105 or 268.204, as appropriate, rather than under this section.

§ 268.505 Interim relief.

(a)(1) When the Board appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the administrative judge orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Board appeal. The employee may decline the offer of interim relief.

(2) Service under the temporary or conditional restoration provisions of paragraph (a)(1) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the Commission upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the Commission reverses the decision on appeal.

(3) When the Board appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the Board delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Board to make the payment, then the Board shall pay interest from the date of the original decision until payment is made.

(4) The Board shall notify the Commission and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Board to provide notification will result in the dismissal of the Board's appeal.

(5) The Board may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

(b) If the Board files an appeal and has not provided required interim relief, the complainant may request dismissal of the Board's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the Board's appeal. A copy of the request must be served on the Board at the same time it is filed with EEOC. The Board may respond with evidence and argument to the complainant's request to dismiss within 15 days of the date of service of the request.

Subpart G—Matters of General Applicability

§ 268.601 EEO group statistics.

(a) The Board shall establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability(ies) of its employees.

(b) Data on race, national origin and sex shall be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If the employee still refuses to provide the information, the Board must make a visual identification and inform the employee of the data it will be reporting. If the Board believes that information provided by an employee is inaccurate, the Board shall advise the employee about the solely statistical purpose for which the data is being collected, the need for accuracy, the Board's recognition of the sensitivity of the information and the existence of procedures to prevent its unauthorized disclosure. If, thereafter, the employee declines to change the apparently inaccurate self identification, the Board must accept it.

(c) Subject to applicable law, the information collected under paragraph (b) of this section shall be disclosed only in the form of gross statistics. The Board shall not collect or maintain any information on the race, national origin or sex of individual employees except in accordance with applicable law and when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(d) The Board's system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used.

(e) The Board may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the Board's equal employment opportunity program. The Board shall not establish a quota for the

employment of persons on the basis of race, color, religion, sex, or national origin.

(f) Data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If an employee who has been appointed pursuant to a special Board program for hiring individuals with a disability still refuses to provide the requested information, the Board must identify the employee's disability based upon the records supporting the appointment. If any other employee still refuses to provide the requested information or provides information that the Board believes to be inaccurate, the Board should report the employee's disability status as unknown.

(g) The Board shall report to the Commission on employment by race, national origin, sex and disability in the form and at such times as the Board and Commission shall agree.

§ 268.602 Reports to the Commission.

(a) The Board shall report to the Commission information concerning pre-complaint counseling and the status, processing, and disposition of complaints under this part at such times and in such manner as the Board and Commission shall agree.

(b) The Board shall advise the Commission whenever it is served with a Federal court complaint based upon a complaint that is pending on appeal at the Commission.

(c) The Board shall submit annually for the review and approval of the Commission written equal employment opportunity plans of action. Plans shall be submitted in the format prescribed by the Commission and shall include, but not be limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the Board's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the Board to carry out its equal employment opportunity program.

§ 268.603 Voluntary settlement attempts.

The Board shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved.

§ 268.604 Filing and computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

§ 268.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage under § 268.104, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Board and EEOC requests for information. If the complainant is an employee of the Board and he designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Board and EEOC requests for information. The Board is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and the representative, if employed by the Board and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Board or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or the Board would conflict with the official or collateral duties of the representative, the Commission or the Board may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the Board has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of material shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Board.

(e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Board employees shall be in a duty status when their presence is authorized or required by Commission or Board officials in connection with a complaint.

§ 268.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Board or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the Board for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Board shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

§ 268.607 Delegation of authority.

The Board of Governors may delegate authority under this part, to one or more designees.

Subpart H—Prohibition Against Discrimination in Board Programs and Activities Because of Physical or Mental Disability

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart H is to prohibit discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Application.* (1) This subpart H applies to all programs and activities conducted by the Board. Such programs and activities include:

(i) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC;

(ii) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(iii) Making available the Board's library facilities; and

(iv) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

(2) This subpart H does not apply to Federal Reserve Banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(b) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(d) *Person with a disability* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d)(1) of this section but is treated by Board as having such an impairment.

(e) *Qualified person with a disability* means—

(1) With respect to any Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a person with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a person with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) Qualified individual with a disability is defined for purposes of employment in § 268.203 of this part, which is made applicable to this subpart by § 268.705.

§ 268.703 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make this information available to them in such manner as the Board finds necessary to apprise such persons of the protections against discrimination assured them by this subpart.

§ 268.704 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of a disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provided to others;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of a disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to individuals with a disability.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of a disability.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of a disability, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of a disability. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

(c) The exclusion of individuals who do not have a disability from the benefits of a program limited by Federal statute or Board order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Board order to a different class of individuals with a disability is not prohibited by this subpart.

(d) The Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 268.705 Employment.

No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of § 268.203 of this part shall apply to discrimination in employment in federally conducted programs or activities.

§ 268.706 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.707 of this subpart, no qualified individual with a disability shall, because the Board's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.707 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by individuals with a disability; or

(2) Require the Board to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with this paragraph (a) would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this subpart H through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with a disability, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board shall give priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section as expeditiously as possible.

§ 268.708 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability.

§ 268.709 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford an individual with a

disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the individual with a disability.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with section 268.709 would result in such alterations or burdens. The determination that compliance would result in such alteration or burdens must be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 268.710 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section, rather than subpart B and § 268.203 of this part, applies to all allegations of discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Employment complaints.* The Board shall process complaints alleging discrimination in employment on the basis of a disability in accordance with subparts A through G of this part.

(c) *Responsible official.* The EEO Programs Director shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Director.

(2) *Confidentiality.* The EEO Programs Director shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart , including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Director may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph (d), a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Employment Program Coordinator, or the People with Disabilities Program Coordinator. Complaints should be sent to the EEO Programs Director, Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551. If any Board official other than the EEO Programs Director receives a complaint, he or she shall forward the complaint to the EEO Programs Director.

(e) *Acceptance of complaint.* (1) The EEO Programs Director shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Director shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Director shall dismiss the complaint without prejudice.

(3) If the EEO Programs Director receives a complaint over which the Board does not have jurisdiction, the EEO Programs Director shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the EEO Programs Director shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Director shall forward the investigative report to the Staff Director for Management.

(2) The EEO Programs Director may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Director to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Director shall furnish the complainant with a copy of the investigative report promptly after completion of the investigation and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* (1) If an informal resolution of the complaint is not reached, the EEO Programs Director shall transmit the complaint file to the Staff Director for Management. The Staff Director for Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Director, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of right of the complainant to appeal the letter of findings under paragraph (k) of this section; and

(iv) A notice of right of the complainant to request a hearing.

(2) If the complainant does not file a notice of appeal or does not request a hearing within the times prescribed in paragraph (h)(1) and (j)(1) of this section, the EEO Programs Director shall certify that the letter of findings under this paragraph (g) is the final decision of the Board at the expiration of those times.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Director shall notify the Board of Governors of the appeal by the complainant and that a decision must be made under paragraph (k) of this section.

(i) *Acceptance of appeal.* The EEO Programs Director shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Director that an appeal is untimely. This appeal shall be filed within 15 calendar days of receipt of the decision from the EEO Programs Director.

(j) *Hearing.* (1) Notice of a request for a hearing, with or without a request for an appeal, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section. Upon a timely request for a hearing, the EEO Programs Director shall request that the Board of Governors, or its designee, appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to the complainant and the Board specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557. The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and prehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart G or by the provisions of the Administrative Procedures Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph (j), but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees of the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to the complainant and the EEO Programs Director within 30 days, after the receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Director.

(6) Within15 calendar days after receipt of the recommended decision of the administrative law judge, the complainant may file exceptions to the recommended decision with the EEO Programs Director. On behalf of the Board, the EEO Programs Director may, within 15 calendar days after receipt of the recommended decision of the administrative law judge, take exception to the recommended decision of the administrative law judge and shall notify the complainant in writing of the Board's exception. Thereafter, the complainant shall have 10 calendar days to file reply exceptions with the EEO Programs Director. The EEO Programs Director shall retain copies of the exceptions and replies to the Board's exception for consideration by the Board. After the expiration of the time to reply, the recommended decision shall be ripe for a decision under paragraph (k) of this section.

(k) *Decision.* (1) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this paragraph (k). At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so, shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days

of the receipt by the EEO Programs Director of the notice of appeal and investigative record pursuant to paragraph (h)(1) of this section or 60 days following the end of the period for filing reply exceptions set forth in paragraph (j)(6) of this section, whichever is applicable. If the decision-maker under this paragraph (k) determines that additional information is needed from any party, the decision-maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision-maker shall have 60 days from receipt of the additional information to render the decision on the appeal. The decision-maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision-maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision-maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision-maker may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision-maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

By order of the Board of Governors of the Federal Reserve System, April 9, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–9111 Filed 4–14–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–06–AD; Amendment 39–13112; AD 2003–08–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Model Tay 650–15 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain serial numbers (SNs) of Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model Tay 650–15 turbofan engines. This action requires initial and repetitive visual inspections of low pressure (LP) turbine stage 2 rotor discs and LP turbine stage 3 rotor discs on certain SNs of engines, for corrosion. This AD is prompted by reports of excessive corrosion found during disc inspection. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

DATES: Effective May 20, 2003.

We must receive any comments on this AD by June 16, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may get the service information referenced in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany, telephone +49 (0) 33–7086–1768; fax +49 (0) 33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain SNs of RRD Model Tay 650–15 turbofan engines. The LBA advises that the LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs of seventeen Tay 650–15 turbofan engines have been found to have excessive corrosion. RRD has determined that this excessive corrosion is the result of the specific environment in which these engines operate. This AD requires initial and repetitive visual inspections for corrosion of low pressure (LP) turbine stage 2 rotor discs and LP turbine stage 3 rotor discs on certain SNs of engines. Because disc deterioration may already have begun, repetitive inspections are also required if any affected disc is removed from the corrosive environment and put in service in a noncorrosive environment. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

Relevant Service Information

The LBA issued AD 2002–287, dated October 17, 2002, in order to assure the airworthiness of these RRD Model Tay 650–15 turbofan engines in Germany.

FAA's Determination and Requirements of This AD

Although none of these affected disc SNs are used on any airplanes that are registered in the United States, the possibility exists that these disc SNs could be installed into engines used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RRD Tay 650–15 turbofan engines of the same type design, this AD is being issued to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane. For engine SNs 17251, 17255, 17256, 17273, 17275, 17280, 17281, 17282, 17300, 17301, 17327, 17332, 17365, 17393, 17437, 17563, and 17618, this AD requires initial and repetitive visual inspections of LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs for corrosion.

Bilateral Airworthiness Agreement

This engine model is manufactured in Germany, and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29)

and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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.

Immediate Adoption of This AD

Since none of these affected engine SNs are used on any airplanes that are registered in the United States, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–06–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–06–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Federal Aviation Administration (FAA), Airworthiness Directive (AD) 2003–08–01, Docket No. 2003–NE–06, Amendment 39–13112, Rolls-Royce Deutschland Ltd. & Co KG, Subject: Initial and Repetitive Visual Inspections of Low Pressure (LP) Turbine Stage 2 Rotor Discs and LP Turbine Stage 3 Rotor Discs

Effective Date

(a) This AD becomes effective May 20, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model Tay 650–15 turbofan engines with low pressure (LP) turbine stage 2 rotor discs, part number (P/N) JR32319, and LP turbine stage 3 rotor discs, P/N JR32320A, that have a serial number (SN) listed in Table 1 of this AD. These engines are installed on, but not limited to Fokker F.28 Mark 0100 airplanes. Table 1 follows:

TABLE 1.—DISC SNS

Last known engine SN	LP turbine stage 2 rotor disc, part No. JR32319, SNs	LP turbine stage 3 rotor disc, part No. JR32320A, SNs
17251	EETM1355	DETM1853/A
17255	DETM19039	DETM19007
17256	SETM11283	SETM15065
17273	PETM718	DETM14896/A
17275	DETM17343	DETM17546
17280	EETM1808	SETM14410
17281	DETM19036	DETM18999
17282	EETM2163	DETM3703/A
17300	SETM12109	SETM11379
17301	DETM18772	DETM18348
17327	EETM2510	DETM15404/A
17332	SETM20088	SETM21297
17365	SETM15166	SETM15188
17393	DETM17083	DETM16860
17437	EETM19304	DETM19008
17563	EETM4414	DETM15583/A
17618	EETM5010	DETM9588/A

Unsafe Condition

(d) This AD was prompted by reports of excessive corrosion found during LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc inspection. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

Compliance

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

Visual Inspections

(f) Perform an initial visual inspection of the LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc for corrosion within 11,700 cycles-in-service (CIS) after the effective date of this AD. Information on performing visual inspections can be found in RRD engine manual task 72–52–23–200–000 and task 72–52–24–200–000 respectively.

Discs That Fail Inspection

(g) Before further flight, do the following for discs that fail inspection:

(1) Replace any LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs found with corrosion pits beyond repairable limits. Information on repairable limits may be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

(2) Repair any LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs found with corrosion pits within repairable limits. Information on repairable limits may be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

Repetitive Visual Inspections

(h) Perform repetitive visual inspections of the LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc for corrosion within every 11,700 cycles-since-last inspection. Information on performing visual inspections can be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

(i) Disposition discs that fail inspection as specified in paragraph (g) of this AD.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD in accordance with 14 CFR 39.19.

Material Incorporated by Reference

(k) None.

Related Information

(l) LBA airworthiness directive 2002–287, dated October 17, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on April 7, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–9017 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–343–AD; Amendment 39–13108; AD 2003–07–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires inspection of landing gear parts and/or their records to see that parts have serial numbers and that each part's number of flight cycles has been tracked; assignment of serial numbers and flight cycle use numbers if necessary; and removal of individual landing gear components from service when they reach their life limit. This amendment also requires adding landing gear parts to the lists of safe-life components, and assigning life limits to landing gear parts already in service. The actions specified by this AD are intended to prevent failure of landing gear parts, which could lead to landing gear collapse. This action is intended to address the identified unsafe condition.

DATES: Effective May 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 2003.

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

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 25, 2002 (67 FR 60196). That action proposed to require inspection of landing gear parts and/or their records to see that parts have serial numbers and that each part's number of flight cycles has been tracked; assignment of serial numbers and flight cycle use numbers if necessary; and removal of individual landing gear components from service when they reach their life limit. That action also proposed to add landing gear parts to the lists of safe-life components, and assign life limits to landing gear parts already in service.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter did not propose any changes, but asked for clarification of the meaning of certain sections in the supplemental NPRM. The FAA will provide this clarification directly to the commenter.

Request To Allow Disposition of Life-Limited Parts

One commenter states that the serialization/tracking requirements specified in the supplemental NPRM are more restrictive than the requirements of section 43.10 of the Federal Aviation Regulations (14 CFR 43.10), which govern the use of all life-limited parts. The commenter reiterates paragraph (c) of that regulation, and notes that six acceptable methods are listed for deterring the installation of a part after it has reached its life limit. The commenter adds that it currently uses two of those six methods (record keeping system and mutilation) to control all life-limited parts. The commenter also adds that it scraps/mutilates many of the less expensive life-limited components at the end of every overhaul cycle, and/or when the component is removed from service in the line maintenance environment. Then only new parts are used during line replacements and gear assemblies, with documentation in place to identify all parts that are handled by this method. The commenter asks that the FAA consider revising paragraphs (a), (b), (c), (d), and (e) of the supplemental NPRM to be consistent with the existing guidance in the specified regulation, as it provides adequate assurance of airworthiness.

We do not agree with the commenter that the serialization/tracking requirements specified in the supplemental NPRM are more restrictive than those of the specified regulation. The requirements in paragraph (d) of this final rule do not specify the process the operators must use in order to remove the part from service. This final rule establishes the life limits for aircraft parts not previously tracked, whereas the regulation mandates the disposition of parts after they have reached their life limit.

Explanation of Change to Final Rule

An internal review of the supplemental NPRM and the referenced service information indicates a difference between the two documents. Paragraph (b)(1) of the supplemental NPRM titled, ''Assignment of Serial Numbers and Flight Cycles,'' requires assigning a serial number to each part per a method approved by the Manager, Seattle Aircraft Certification Office, FAA. However, in Part 1.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision

1, dated September 27, 2001, an acceptable method is defined for assigning serial numbers. Therefore, we have changed paragraph (b)(1) in this final rule to include the procedures in the service bulletin as an additional source for assigning serial numbers.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

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

Cost Impact

There are approximately 3,132 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,099 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $65,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–07–12 Boeing: Amendment 39–13108. Docket 2000–NM–343–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category; line numbers 1 through 3132 inclusive.

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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of landing gear parts, which could lead to landing gear collapse, accomplish the following:

Inspection of Parts and/or Records

(a) Within 10 years from the effective date of this AD, examine records and/or landing gear parts per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001, to determine whether parts have serial numbers and whether the number of flight cycles for each part has been tracked. If landing gear parts have serial numbers, as listed in the service bulletin, and the number of flight cycles has been tracked, no further action is necessary for paragraphs (a), (b), or (c) of this AD.

Assignment of Serial Numbers and Flight Cycles

(b) If any part examined, as mandated in paragraph (a) of this AD, does not have a serial number, within 10 years from the effective date of this AD, do the actions required by paragraphs (b)(1) and (b)(2) of this AD.

(1) Assign a serial number to each part per Part 1.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001; or per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(2) Mark the serial number on each part per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

(c) If flight cycles for any part examined, as mandated in paragraph (a) of this AD, have not been tracked, within 10 years from the effective date of this AD, assign a number of lifetime flight cycles to that part per Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

Removal From Service at Life Limit

(d) When any landing gear part has reached its life-limit number of flight cycles, as described in Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001, before further flight, remove that part from service and replace it with a landing gear part having a serial number and a lifetime flight cycle number per the service bulletin.

Parts Installation

(e) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part unless it has been assigned a serial number and a lifetime flight cycle number per the requirements of this AD.

(f) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part that has reached its life limit of flight cycles, per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(i) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on May 20, 2003.

Issued in Renton, Washington, on April 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8739 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–329–AD; Amendment 39–13109; AD 2003–07–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections for excessive wear of the internal and external splines of the torque tube couplings of the trailing edge flaps, and replacement of the couplings, if necessary. That AD also provides an optional modification that, if installed, constitutes terminating action for the inspection requirements. This amendment expands the applicability of the existing AD and requires new inspections of the torque tube assemblies and certain gearbox assemblies and universal joints in the drive system for the inboard trailing edge flaps, and follow-on actions if necessary. For certain airplanes, this amendment also adds a new optional modification, which, if installed, terminates certain inspections. The actions specified by this AD are intended to prevent separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane.

DATES: Effective May 20, 2003.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 20, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 23, 1992 (57 FR 54298, November 18, 1992).

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–25–01, amendment 39–8416 (57 FR 54298, November 18, 1992), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on May 29, 2002 (67 FR 37357). The action proposed to continue to require repetitive inspections for excessive wear of the internal and external splines of the torque tube couplings of the trailing edge flaps, and replacement of the couplings, if necessary. The action proposed to expand the applicability of the existing AD and require new inspections of the torque tube assemblies and certain gearbox assemblies and universal joints (U-joints) in the drive system for the inboard trailing edge flaps, and follow-on actions if necessary. For certain airplanes, the action also proposed to require a previously optional modification and/or a new modification, which would terminate certain inspections.

Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002. The proposed AD refers to Revision 1 of that service bulletin, dated December 2, 1999, as the appropriate source of service information for the proposed inspections and corrective actions. Boeing issued Revision 2 of the service bulletin primarily to reduce the effectivity due to the installation of a flap-skew detection system on airplanes with line numbers 981 and subsequent. Boeing also made certain editorial changes in Revision 2 of the service bulletin. Since there are no changes in Revision 2 of the service bulletin that affect the actions required by this AD, we have revised paragraphs (b), (c), (d), and (e) of this AD to refer to Revision 2 of the service bulletin instead of Revision 1. The new paragraph (h) of this AD gives credit for inspections accomplished before the effective date of this AD per Revision 1 of the service bulletin.

Explanation of Changes to Proposed AD

Because the language in Note 5 of the proposed AD is regulatory in nature, the provisions of that note have been included in paragraph (h) of this AD. Subsequent paragraphs and notes have been reidentified accordingly.

Also, for clarification, we have revised service bulletin references in the body of this AD to specify that the appropriate source for instructions is the Accomplishment Instructions of the service bulletin.

Comments

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

Support for the Proposal

One commenter concurs with the proposed AD.

Request To Remove Terminating Action

Two commenters request that we remove paragraphs (f) and (g) of the proposed AD. Those paragraphs would require replacing the numbers 3 and 6 and numbers 4 and 5 torque tube assemblies. Both commenters state that these replacements would be costly and burdensome to operators of the affected airplanes. One of the commenters, the airplane manufacturer, presents data that show that there have been no reported cases of trailing edge flap skew since the release of the original issue of Boeing Alert Service Bulletin 757–27A0125 on July 17, 1997. The commenter states that these data show that the proposed inspections are adequate to ensure the safety of the airplane fleet.

We partially concur with the commenters' request. We agree that it is not necessary to mandate replacement of the torque tube assemblies at this time. We consider three criteria for those situations where repetitive inspections may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) The area is easily accessible, (2) the damage is easily detectable, and (3) the consequences of the damage are not likely to be catastrophic. In consideration of the excessive wear that may occur on torque tube assemblies numbers 3 and 6 and numbers 4 and 5, we have determined that the circumstances meet these three criteria warranting the ability of owners and operators, at their option, to perform continual repetitive inspections.

However, we find that some operators may wish to replace and upgrade the affected torque tube assemblies in lieu of continuing to inspect indefinitely. Thus, we have determined that it is appropriate to leave the replacement of the torque tube assemblies as one option for compliance with this AD. Therefore, we have retained paragraphs (f) and (g) of the proposed AD in this final rule, but we have removed the required compliance times from those paragraphs. In addition, we have revised the Cost Impact section of the preamble of this AD to show the terminating modifications as optional.

Request To Revise Compliance Times for Initial Inspections

Two commenters request that we extend the compliance time for certain initial inspections that would be required by the proposed AD. One commenter requests that we revise the initial compliance time for paragraphs (c) and (e) of the proposed AD from the latest of 3,000 total flight cycles, 24 months after the airplane's date of manufacture, and 18 months after the effective date of the AD, to the later of 24 months and a certain flight-cycle limit (*e.g.*, 3,000 flight cycles) after the effective date of the AD. The second commenter requests that we revise the initial compliance time to not less than 24 months after the effective date of the AD. (This commenter does not specify to which paragraphs its request is intended to apply.) The second commenter states that its data do not support the proposed inspection timetable with respect to total flight cycles or calendar time since date of manufacture. It contends that wear is a function of cycles and should be free of calendar restriction. Both commenters are seeking an extension of the compliance time so that it will coincide with their approved ''C''-check interval.

We concur with the commenters' request. The original intent of the 18-month compliance option in paragraphs (b)(2), (c), and (e) of the proposed AD was that it would coincide with ''C''-check intervals for the majority of operators. This did not take into consideration that certain freighter configurations of Model 757–200 series airplanes have a ''C''-check interval of 24 months. Thus, we have revised paragraphs (b)(2), (c), and (e) of this AD to require accomplishment of the initial inspections associated with those paragraphs prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later.

Request To Revise Repetitive Inspection Interval

One commenter requests that we revise the repetitive interval for the inspections of the gearbox assemblies and U-joints specified in paragraph (e) of the proposed AD. The proposed AD specifies that these inspections must be performed every 3,000 flight cycles or 24 months, whichever is first. The commenter requests that we revise the interval to 3,000 flight cycles or 18 months, whichever comes first, to coincide with its ''C''-check interval of the earliest of 6,000 flight hours, 3,000 flight cycles, and 18 months. The commenter presents data that show that Model 757 series airplanes typically reach the 18-month limit before they reach the 3,000-flight-cycle limit.

We partially concur with the commenter's request. We do not agree that it is necessary to reduce the intervals to meet the commenter's intent. Unless a ''minimum'' inspection interval is specified, operators are always permitted to perform actions earlier than the compliance time specified in an AD. In this case, it is at the operator's discretion to inspect its affected airplanes at the earlier of 18 months or 3,000 flight cycles, if that interval more closely fits the operator's maintenance schedule.

However, for clarification, we find that a change in terminology may be helpful. Therefore, we have revised paragraphs (b), (c), and (e) of this AD to state that repetitive inspections must be accomplished ''at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first.''

Request To Clarify Applicability of Inspection Requirement

One commenter points out that one airplane, line number (L/N) 412, was omitted from paragraph (c) of the proposed AD. The commenter states that paragraph (c) should be corrected to identify ''airplanes with L/Ns 1 through 580 inclusive, which are identified as Groups 1 and 2 airplanes'' in the service bulletin.

We concur. While L/N 412 is included in Groups 1 and 2 in the service bulletin, that L/N was inadvertently omitted from paragraph (c) of the proposed AD. Our intention was for our AD to align with the referenced service bulletin; no differences were noted in the preamble of the proposed AD. Therefore, we have revised paragraph (c) of this AD to include L/N 412. Because the airplane with L/N 412 is not a U.S.-registered airplane, there is no economic impact on the U.S. fleet and, thus, we find that making this change will not increase the scope of the AD or the economic burden associated with the AD.

Request To Give Credit for Previously Accomplished Inspections

One commenter requests that credit be given for inspections accomplished before the effective date of the AD per Revision 1 of the service bulletin. The commenter states that the compliance time for the first inspection should then be 3,000 flight cycles or 24 months from the most recent inspection.

We concur but find that no change is necessary to meet the commenter's intent. We give credit for actions accomplished before the effective date of an AD by means of the phrase ''*Compliance:* Required as indicated, unless accomplished previously,'' which appears in every AD. As the commenter states, the next inspection must be done within 3,000 flight cycles or 24 months after the most recent

inspection, whichever is first. No change is necessary in this regard. (Since we have revised this final rule to refer to Revision 2 of the service bulletin, credit for inspections per Revision 1 of the service bulletin is given in paragraph (h) of this AD.)

Request To Clarify Definition of Wear

One commenter requests that we more clearly define excessive wear of the torque tube assemblies, as it pertains to the requirement for measurements in paragraph (d) of the proposed AD. The commenter states that normal, worn, and excessively worn areas are subject to interpretation, and different individuals could interpret wear differently.

We note that paragraph (d) of the proposed AD would require measurements ''if any wear is found during any inspection required by paragraph (b) or (c) of this AD. * * *.'' If wear is found during an inspection per paragraph (b) or (c) of this AD, the follow-on measurement required by paragraph (d) of this AD should provide adequate guidance as to the necessary course of action. However, we find that it may be helpful to provide examples of some types of wear that may be found. Therefore, paragraphs (b), (c), and (d) of this AD have been revised to include examples of wear that may be found.

Request To Revise Compliance Threshold for Paragraph (e) of Proposed AD

One commenter expresses concern over the inspections that would be required by paragraph (e) of the proposed AD and the requirement to replace the gearbox assembly and drive shaft assembly with new components if certain measurements are outside the limits specified in the service bulletin. The commenter is concerned about the potential cost of replacement parts, which it states may be as high as $108,000. A second commenter, the Air Transport Association of America, on behalf of its members, requests that these costs be specified in the AD. The first commenter is also concerned about the availability of necessary parts within the compliance time specified in the proposed AD, and it requests that we revise the initial compliance time to correspond with spares availability. The commenter also requests that we allow repetitive inspections of the gearbox assemblies and U-joints, as allowed for the torque tubes elsewhere in the proposed AD, so that the gearboxes or drive shaft assemblies do not have to be replaced before further flight if the measurements are outside the specified limits.

We do not concur. The compliance times specified in this final rule represent an acceptable interval of time wherein affected airplanes may be allowed to operate without jeopardizing safety. Further, we find that allowing repetitive inspections in lieu of requiring replacement of discrepant parts with new parts would not ensure that the unsafe condition is addressed in a timely manner. The measurement criteria identified in paragraphs (e)(1) and (e)(2) of this AD represent the maximum wear limits for the gearboxes and U-joints. To allow continued use of these components, even with repetitive inspections, would greatly increase the potential for a trailing edge flap skew. With regard to the commenter's concern about parts availability, we have reviewed available data and find that an adequate supply of parts should be available. We have made no change to this final rule in this regard.

We also do not concur with the other commenter's request that we include the cost associated with replacing the gearboxes or U-joints in the AD. The economic analysis included in AD actions is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on-condition'' actions, such as replacing a part if a discrepancy is detected during a required inspection. Such ''on-condition'' actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Request To Revise Repetitive Interval for Paragraph (e) of Proposed AD

One commenter requests that we increase the repetitive interval for the inspections of the gearbox assemblies and U-joints that would be required by paragraph (e) of the proposed AD. The proposed AD states a repetitive interval of 3,000 flight cycles or 24 months, whichever is first; the commenter requests an interval of 4,500 flight cycles or 48 months, whichever is later. To justify its request, the commenter presents data from three airplanes in its fleet. These data show that no discrepancies were found on two of the airplanes, and only minor wear of one torque tube was found on the third. The commenter also contends that calendar time is not useful for gauging wear, as wear is a function of flight cycles.

We do not concur. Three airplanes do not constitute an adequate statistical sample size to determine that extension of the repetitive interval would provide an acceptable level of safety. While in general the number of flight cycles is a large contributor to wear on components, the intent of this AD is to protect against all types of wear. This includes wear accelerated by corrosion, which is a function of calendar time. We have made no change to the final rule in this regard.

Explanation of Additional Change to Proposed AD

We have added paragraph (i)(2) to this final rule to give credit for accomplishment of certain alternative methods of compliance that were approved previously in accordance with AD 92–25–01, amendment 39–8416.

Also, throughout this final rule, we have changed the citation for Boeing Service Bulletin 757–27–0107, dated June 16, 1994, to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

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

Cost Impact

There are approximately 979 Model 757–200, –200CB, and –200PF series airplanes of the affected design in the worldwide fleet.

In AD 92–25–01, we estimated that approximately 279 U.S.-registered airplanes would be subject to the inspections in that AD. For these airplanes, the currently required inspections take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $33,480, or $120 per airplane, per inspection cycle.

We estimate that approximately 283 U.S.-registered airplanes (Group 1 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the required inspection of torque tube assemblies 3 and 6. This inspection will take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this new inspection

required for U.S. operators of Group 1 airplanes is estimated to be $33,960, or $120 per airplane, per inspection cycle.

We estimate that approximately 376 U.S.-registered airplanes (Groups 1 and 2 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the required inspection of torque tube assemblies 4 and 5. This inspection will take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new inspections required for U.S. operators of Groups 1 and 2 airplanes is estimated to be $45,120, or $120 per airplane, per inspection cycle.

We estimate that 643 U.S.-registered airplanes (Groups 1, 2, and 3 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the new required inspections of the gear box assemblies and U-joints of the drive shaft assembly. These inspections will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new inspections required for U.S. operators is estimated to be $154,320, or $240 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the modification that involves replacement of torque tube assemblies 3 and 6, this modification will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,550. Based on these figures, the cost impact of this optional modification is estimated to be $4,850 per airplane.

Should an operator elect to accomplish the modification that involves replacement of torque tube assemblies 4 and 5, this modification will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,550. Based on these figures, the cost impact of this optional modification is estimated to be $4,850 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8416 (57 FR 54298, November 18, 1992), and by adding a new airworthiness directive (AD), amendment 39–13109, to read as follows:

2003–07–13 Boeing: Amendment 39–13109. Docket 2001-NM–329–AD. Supersedes AD 92–25–01, Amendment 39–8416.

Applicability: Model 757–200, –200CB, and –200PF series airplanes; line numbers (L/Ns) 1 through 979 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 92–25–01

Repetitive Visual Inspections and Corrective Actions

(a) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Prior to the accumulation of 2,000 total flight cycles, or within the next 200 flight cycles after April 30, 1990 (the effective date of AD 90–08–16, amendment 39–6574), whichever occurs later, and thereafter at intervals not to exceed 2,000 flight cycles, perform a general visual inspection of the torque tube 3 and 6 coupling splines, in accordance with Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990.

Note 2: Operators who have conducted inspections of the torque tube coupling splines prior to December 23, 1992 (the effective date of AD 92–25–01, amendment 39–8416), in accordance with Boeing Service Letter 757–SL–27–52, dated January 31, 1990, or Boeing Service Letter 757–SL–27–52–A, dated March 21, 1990, are considered to be in compliance with paragraph (a) of this AD.

(1) If the measurement over the pin, as detailed in the service letter, is less than 1.8605 inches but equal to or greater than 1.8533 inches, repeat the inspection within 1,000 flight cycles, until the requirements of paragraph (c) or (f) of this AD have been accomplished.

(2) If the measurement over the pin, as detailed in the service letter, is less than 1.8533 inches, replace the coupling before further flight, in accordance with the service letter.

New Requirements of This AD

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

New Repetitive Inspections: Torque Tubes 3 and 6

Note 4: If the requirements of paragraph (f) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (b) of this AD is not required.

(b) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive, which are identified as Group 1 airplanes in Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002: Do a general visual inspection for excessive wear of torque tube assemblies 3 and 6, per the Accomplishment Instructions of the service bulletin. Wear may include, but is not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox. Do the initial inspection at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. If no wear is found, repeat the inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, until paragraph (f) of this AD has been accomplished. Doing paragraph (b) of this AD terminates the requirements of paragraph (a) of this AD for torque tube assemblies 3 and 6.

(1) For airplanes on which the inspection in paragraph (a) of this AD has been done prior to the effective date of this AD: Inspect within 3,000 flight cycles after the most recent inspection done prior to the effective date of this AD per paragraph (a) of this AD, or within 24 months after the effective date of this AD, whichever is first.

(2) For airplanes on which the inspection in paragraph (a) of this AD has not been done prior to the effective date of this AD: Inspect prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later.

New Repetitive Inspections: Torque Tubes 4 and 5

Note 5: If the requirements of paragraph (g) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (c) of this AD is not required.

(c) For airplanes with L/Ns 1 through 580 inclusive, which are identified as Groups 1 and 2 airplanes in Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002: Prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, do a general visual inspection for excessive wear of torque tube assemblies 4 and 5, per the Accomplishment Instructions of the service bulletin. Wear may include, but is not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox. If no wear is found, repeat the inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, until paragraph (g) of this AD has been accomplished.

Corrective Actions: Torque Tubes 3, 4, 5, and 6

(d) If any wear (including, but not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox) is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, measure the distance of the measurement over pins, per the Accomplishment Instructions of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002.

(1) If the distance is 1.8337 inches or more, repeat the general visual inspection required by paragraph (b) or (c) of this AD at the applicable interval specified in Table 1 of Figure 7 of the service bulletin, until the actions in paragraphs (f) (for torque tube assemblies 3 and 6) and (g) (for torque tube assembles 4 and 5) have been done.

(2) If the distance is less than 1.8337 inches, do the actions in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD, per the Accomplishment Instructions of the service bulletin.

(i) Before further flight, measure the distance of the outside diameter, as shown in Table 1 of Figure 7 of the service bulletin.

(ii) Replace the affected torque tube assembly with a new torque tube assembly at the applicable time specified in Table 1 of Figure 7 of the service bulletin.

New Repetitive Inspections: Gearbox Assemblies and Universal Joints

(e) For airplanes with L/Ns 1 through 979 inclusive: Prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform an inspection to measure the axial movement of the angle and tee gearbox assemblies and the distance between the upper and lower yokes of the universal joints (U-joints) of the drive shaft assemblies, per the Accomplishment Instructions of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002. Repeat these measurements at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, and do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any measurement of the axial movement of the gearbox assembly is more than 0.015 inch, as specified in the service bulletin: Before further flight, replace the gearbox assembly with a new gearbox assembly, per the Accomplishment Instructions of the service bulletin.

(2) If the distance between the upper and lower yokes of the U-joints is more than 0.020 inch, as specified in Steps 3 and 6 of Figure 6 of the service bulletin: Before further flight, replace the drive shaft assembly with a new drive shaft assembly, per the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(f) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Replacing torque tube assemblies number 3 and 6 with new, improved torque tube assemblies, and installing a sealant plug in the shafts of four gearboxes, per the Accomplishment Instructions of Boeing Service Bulletin 757–27–0099, dated March 12, 1992, terminates the inspections required by paragraphs (a) and (b) of this AD.

(g) For airplanes with L/Ns 1 through 580 inclusive: Replacing torque tube assemblies number 4 and 5 with new, improved torque tube assemblies, and changing the related angle and tee gearbox assemblies, per the Accomplishment Instructions of Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form, terminates the inspections required by paragraph (c) of this AD. The changes for the related tee and angle gearbox assemblies are shown in Figures 6 and 7, respectively, of the service bulletin.

Note 6: No terminating action has been identified for the inspections specified in paragraph (e) of this AD.

Credit for Actions Accomplished Previously

(h) Inspections, measurements, and replacements done prior to the effective date of this AD per Boeing Alert Service Bulletin 757–27A0125, dated July 17, 1997; or Revision 1, dated December 2, 1999; are considered acceptable for compliance with the corresponding requirements of paragraphs (b), (c), (d), and (e) of this AD.

Alternative Methods of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 92–25–01, amendment 39–8416, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(k) The inspections and corrective actions shall be done in accordance with Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990; and Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002; as applicable. The modifications, if accomplished, shall be done in accordance with Boeing Service Bulletin 757–27–0099, dated March 12, 1992; and Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002; and Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990; and Boeing Service Bulletin 757–27–0099, dated March 12, 1992; was approved previously by the Director of the Federal Register as of December 23, 1992 (57 FR 54298, November 18, 1992).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on May 20, 2003.

Issued in Renton, Washington, on April 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8742 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–386–AD; Amendment 39–13113; AD 2003–08–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This action requires a one-time inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin. This action is necessary to prevent chafing and damage of the cable assemblies due to contact between the cable and the metal retaining clip on the seat leg, which could result in electrical arcing and consequent smoke and/or fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–386–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-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–386–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Boeing production personnel reported that, while securing a first-class powered seat to the floor during routine maintenance, the seat-to-seat power cable assembly shorted and arced causing a small fire under the seat. Investigation revealed that the tie-wrapped cable assembly had migrated and was contacting the metal retaining clip on the powered seat leg. This condition, if not corrected, could result in chafing and damage of the cable assemblies, consequent electrical arcing, and smoke and/or fire in the cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002, which describes procedures for a one-time visual inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin between fuselage stations Y=273.500 and Y=465.000. The modification includes fabrication of identification bands for the left and right side seat plug cables, and accomplishment of one of the following conditions:

Condition 1—If no chafing or damage is found, install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire;

Condition 2—If any chafing or damage is found that is within the limits specified in Chapter 20 of the Standard Wiring Practices Manual (SWPM), repair the damaged cable assemblies and do a continuity check; install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire; or

Condition 3—If any chafing or damage is found that is outside the limits specified in Chapter 20 of the SWPM, replace the damaged wires or cable assemblies with new components, and do a continuity check; install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire.

The procedures for inspection and modification described above are for Group 1 airplanes. The procedures for Group 2 airplanes are the same, except there is no coiling and stowing of the ground wire.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent chafing and damage of the cable assemblies due to contact between the cable and the metal retaining clip on the seat leg, which could result in electrical arcing and consequent smoke and/or fire in the cabin. This AD requires a one-time inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin. The actions are required to be accomplished in

accordance with the service bulletin described previously.

Cost Impact

None of the Model MD–90–30 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $420 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–386–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–08–02 McDonnell Douglas: Amendment 39–13113. Docket 2001–NM–386–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002; 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 (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 chafing and damage of the cable assemblies of the powered seats located in the first-class cabin, which could result in electrical arcing and consequent smoke and/or fire in the cabin, accomplish the following:

One-Time Inspection/Follow-on Modification

(a) Within 6 months after the effective date of this AD: Do a one-time general visual inspection for chafing and damage of the cable assemblies of the powered seats located in the first-class cabin between fuselage stations Y=273.500 and Y=465.000, per Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002. Before further flight, do the applicable follow-on modification specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

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

(1) If no chafing or damage is found, modify the cable assemblies (includes

installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 1 of the service bulletin.

(2) If any chafing or damage is found that is within the limits specified in Chapter 20 of the Standard Wiring Practices Manual (SWPM), modify the cable assemblies (includes repairing the damaged cable assemblies and doing a continuity check; installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 2 of the service bulletin.

(3) If any chafing or damage is found that is outside the limits specified in Chapter 20 of the SWPM, modify the cable assemblies (includes replacing the damaged wires or cable assemblies with new components, and doing a continuity check; installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 3 of the service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 30, 2003.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8892 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14845; Airspace Docket No. 03–ACE–30]

Modification of Class E Airspace; Shenandoah, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Shenandoah, IA revealed discrepancies in the Shenandoah Municipal Airport, IA airport reference point and in the location of the Shenandoah, IA nondirectional radio beacon (NDB), both used in the legal description for the Shenandoah, IA Class E airspace. This action corrects the discrepancies by modifying the Shenandoah, IA Class E airspace and by incorporating the current Shenandoah Municipal Airport, IA airport reference point and the current location of the Shenandoah NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14845/ Airspace Docket No. 03–ACE–30, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Shenandoah, IA. It incorporates the current airport reference point for Shenandoah Municipal Airport, IA and the current location of the Shenandoah NDB. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or

arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14845/Airspace Docket No. 03–ACE–30.'' The postcard will be date/time stamped and returned to the commentor.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Shenandoah, IA

Shenandoah Municipal Airport, IA
(Lat. 40°45′06″ N., long. 95°24′49″ W.)
Shenandoah NDB
(Lat. 40°45′06″ N., long. 95°24′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Shenandoah Municipal Airport and within 2.6 miles each side of the 140° bearing from the Shenandoah NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 4, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9181 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Establishment of Class E Airspace; Moundridge, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Wednesday, March 5, 2003, (68 FR 10369). The final rule established Class E airspace at Moundridge, KS.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–5130, published on Wednesday, March 5, 2003, (68 FR 10369), established Class E airspace at Moundridge, KS. The Class E airspace was defined with reference to Moundridge Municipal Airport, KS. The published coordinates of Moundridge Municipal Airport, KS were incorrect.

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace at Moundridge, KS, as published in the **Federal Register** on Wednesday, March 5, 2003 (68 FR 10369), is corrected as follows:

§ 71.1 [Corrected]

On page 10370, Column 1, second paragraph, third line change ''(Lat. 38°12′25″ N., Long. 97°30′11″ W.)'' to read ''(Lat. 38°12′33″ N., Long. 97°30′10″ W.).''

Issued in Kansas City, MO, on March 31, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9180 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14843; Airspace Docket No. 03–ACE–28]

Modification of Class E Airspace; Rock Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action revises Class E airspace at Rock Rapids, IA. The Rock Rapids Nondirectional Radio Beacon (NDB) that served Rock Rapids Municipal Airport, Rock Rapids, IA has been decommissioned and standard instrument approach procedures (SIAPs) that utilized the NDB have been cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAPs is no longer needed.

The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rule (IFR) at Rock Rapids, IA, delete the Rock Rapids NDB and coordinates from the legal

description of Class E airspace at Rock Rapids, IA, and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, August 7, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14843/ Airspace Docket No. 03–ACD–28, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Rock Rapids, IA. The Rock Rapids NDB has been decommissioned and the NDB SIAPs that served Rock Rapids Municipal Airport, Rock Rapids, IA has been cancelled. Controlled airspace extending upward from 700 feet AGL that accommodated these SIAPs is no longer needed. The amendment to Class E airspace at Rock Rapids, IA provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at Rock Rapids Municipal Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The Rock Rapids NDB and coordinates, and reference to these, are deleted from the legal description of Rock Rapids, IA Class E airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14843/Airspace Docket No. 03–ACE–28'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.09K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Rock Rapids, IA

Rock Rapids Municipal Airport, IA
(Lat 43°27′08″ N., long 96°10′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Rock Rapids Municipal Airport.

* * * * *

Issued in Kansas City, MO, on April 4, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9179 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14844; Airspace Docket No. 03–ACE–29]

Modification of Class E Airspace; New Madrid, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at New Madrid, MO. The New Madrid Nondirectional Radio Beacon (NDB) that served County Memorial Airport, New Madrid, MO has been decommissioned and the standard instrument approach procedure (SIAP) that utilized the NDB has been cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAP is no longer needed. This action also increase the radius of the existing controlled airspace at New Madrid, MO to meet requirements of FAA Order 7400.2E.

The intended effect of this rule is not to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at New Madrid, MO, delete the New Madrid NDB and coordinates from the legal description of Class E airspace at New Madrid, MO, and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14844/Airspace Docket No. 03–AC–29, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at New Madrid, MO. The New Madrid NDB has been decommissioned and the NDB SIAPs that served County Memorial Airport, New Madrid, MO have been cancelled. Controlled airspace extending upward from 700 feet AGL that accommodated these SIAPs is no longer needed. The amendment to Class E airspace at New Madrid, MO provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at County Memorial Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The New Madrid NDB and coordinates, and reference to these, are deleted from the legal description of New Madrid, MO Class E airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14844/Airspace Docket No. 03–ACE–29'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS C, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.0. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 New Madrid, MO

New Madrid, County Memorial Airport, MO
(Lat. 36°32′07″ N., long 89°35′59″ W.)
Malden VORTAC
(Lat. 36°33′17″ N., long 89°54′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of County Memorial Airport and within 1.8 miles each side of the 094° radial of the Malden VORTAC extending from the 6.3-mile radius to 7 miles east of the VORTAC.

* * * * *

Issued in Kansas City, MO, on April 3, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9178 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2001–ASW–13]

Establishment of Class E Airspace; Angel Fire Airport, Angel Fire, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Angel Fire Airport, Angel Fire, NM. The development of an area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP), to Angel Fire Airport, Angel Fire, NM, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Angel Fire Airport, Angel Fire, NM.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5597.

SUPPLEMENTARY INFORMATION:

History

On August 29, 2001, a proposal to amend 14 CFR Part 71 to establish Class E airspace at Angel Fire Airport, Angel Fire, NM, was published in the **Federal Register** (66 FR 45660). The proposal was to establish Class E airspace at Angel Fire Airport, Angel Fire, NM. The development of a RNAV GPS SIAP to Angel Fire Airport, Angel Fire, NM, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Angel Fire Airport, Angel Fire, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed, with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in paragraph 6005 of FAA Order 7400.9K, dated August 31, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 establishes airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Angel Fire Airport and within 2 miles either side of the 005° bearing from the airport extending from the 7.5-mile radius to 11.1 miles north of the airport.

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

Further, the FAA has determined that this regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 31, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW NM E5 Angel Fire Airport, Angel Fire, NM [New]

Angel Fire Airport, NM
(Lat. 36°25′21″ N., long. 105°17′21″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Angel Fire Airport and within 2 miles either side of the 005° bearing from the

airport extending from the 7.5-mile radius to 11.1 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on April 7, 2003.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 03–9177 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. CIV 105; AG Order No. 2667–2003]

RIN 1105–AA82

Minimum Qualifications for Annuity Brokers in Connection With Structured Settlements Entered Into by the United States

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule sets forth the ''minimum qualifications'' an individual annuity broker must meet to be included on the list of annuity brokers established by the Department of Justice and transmitted to all United States Attorneys that will identify brokers who may provide services in connection with structured settlements entered by the United States. It also sets forth procedures to apply for inclusion on the list. Structured settlements allow the Department to resolve litigation by purchasing an annuity policy or making a series of payments rather than by paying a lump sum.

DATES: *Effective date:* This interim rule is effective April 15, 2003.

Comment date: Written comments must be submitted on or before July 14, 2003.

Declaration submission date: To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration specified in this rule to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. Submissions received after April 24, 2003, will be considered for inclusion in any updates of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

ADDRESSES: Comments on the interim rule should be submitted by telefax to 202–514–8071. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 202–514–4552.

All requests for inclusion on the list of annuity brokers should be addressed to Roger D. Einerson, Assistant Director, Torts Branch, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530; telephone 202–514–4552.

SUPPLEMENTARY INFORMATION: This rule implements section 11015(a) of Public Law 107–273, the 21st Century Department of Justice Appropriations Authorization Act, which was enacted on November 2, 2002. Section 11015(a) provides: ''Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys.'' The rule sets forth the minimum qualifications for an annuity broker to be included on the list and the procedures to be followed by individual annuity brokers who desire to be listed.

To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration set forth on the Civil Division Web site (*http://www.usdoj.gov/civil/home.html*) to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. (A copy of the Declaration is also included as an appendix to this rule, but will not be included in the Code of Federal Regulations, as it may be revised later. The most current version of the Declaration will be available for download on the Civil Division's Web site.) Submissions received after April 24, 2003, will be considered for inclusion in the next update of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

An annuity broker submitting a Declaration is declaring under penalty of perjury that the information on the Declaration is true, correct, accurate, and complete. Among other things, the broker must declare: ''I have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.'' This provision serves two purposes. First, it ensures that the broker has significant, relevant experience. Second, it militates against potential conflicts between the interests of listed brokers and the interests of the United States as a defendant. The remaining requirements set forth in the Declaration are self-explanatory. In determining whether an annuity broker meets the minimum qualifications for inclusion on the list, the Department of Justice will rely solely and exclusively on the Declaration submitted by the annuity broker. The Department of Justice will neither verify the information submitted to the Department prior to the listing of an annuity broker, nor vouch for its accuracy for purposes of establishing or updating the list.

Initial declarations should be mailed to the United States Department of Justice, Civil Division, Torts Branch, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Brokers should refer to the Civil Division's Web site (*http://www.usdoj.gov/civil/home.html*) to determine the current mailing address at the time they submit subsequent Declarations.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under section 3(f), Definitions, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this connection included the costs of submission of declarations required if an annuity broker desires to make services available to United States

Attorneys in connection with structured settlements entered by the United States. Costs considered also included the cost of establishing and maintaining a list of brokers and transmitting the lists, including updated lists, to United States Attorneys. The benefits of the rule clearly outweigh the costs because the costs are the lowest costs feasible to comply with the requirement that a list be established as required pursuant to section 11015(a) of Public Law 107–273.

Executive Order 13132

This rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirement contained in this interim rule was approved by the Office of Management and Budget on March 24, 2003 under 5 CFR 1320.13. The information collection requirement contained in this rule will be used by brokers to certify they meet the minimum qualifications to be listed as an annuity broker pursuant to section 11015(a) of Public Law 107–273. The estimated total number of respondents is 400 and the amount of time estimated for an average respondent to respond is one hour for a total public burden of 400 hours per year.

The emergency approval is only valid for 180 days. Comments and suggestions concerning the Declaration that is the Appendix to this interim rule are encouraged and will be accepted until 60 days after the rule is published.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), certifies that this rule will not have a significant economic impact on a substantial number of small entities. The cost of completing the declaration that this rule requires will be minimal, and the Department does not believe that there will be a significant economic impact on any brokers who do not qualify by meeting the minimum qualifications set forth in this rule and in the declaration because any such brokers would not provide brokerage services to United States Attorneys to a significant extent at the present time. The listing of a broker might have a marginal economic impact on the broker to the extent that the broker is not currently soliciting use of brokerage services on the part of United States Attorneys. That impact is not expected to be significant for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act, 5 U.S.C. 553

This rule provides that brokers desiring to be included on a list of annuity brokers who meet minimum qualifications shall submit a specified declaration.

The Department has determined that taking the time to draft and publish a proposed rule for notice and comment before this rule took effect would have been impracticable in light of the short time between the enactment of the statute and the deadline for implementation, and also would have been contrary to the public interest, which strongly favors prompt implementation of the statute. Accordingly, the Department has determined that there is ''good cause'' for exempting this rule from the provision of the Administrative Procedure Act that requires a notice of proposed rulemaking and the opportunity for public comment. 5 U.S.C. 553(b)(B). For the same reasons, the Department also finds ''good cause'' for exempting this rule from the provision of the Administrative Procedure Act providing for a delayed effective date. 5 U.S.C. 553(d). Delaying the opportunity for brokers to seek to be included in the list would be contrary to the public interest.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Annuities, and Brokers.

■ Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Public Law 107–273, 116 Stat. 1758, 1824.

■ 2. A new § 50.24 is added to read as follows:

§ 50.24 Annuity broker minimum qualifications.

(a) *Minimum standards.* The Civil Division, United States Department of Justice, shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. Those qualifications are as follows:

(1) The broker must have a current license issued by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

(2) The broker must have a current license or appointment issued by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker for the company;

(3) The broker must be currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

(4) The broker must never have had a license to be a life insurance agent, producer, or broker revoked, rescinded, or suspended for any reason or for any period of time;

(5) The broker must not have been convicted of a felony; and

(6) The broker must have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.

(b) *Procedures for inclusion on the list.*

(1) An annuity broker who desires to be included on the list must submit a ''Declaration'' that he or she has reviewed the list of minimum qualifications set forth in paragraph (a)

of this section and that he or she meets those minimum qualifications. A sample of the Declaration for annuity brokers to submit is available from the Civil Division's Web site (*http://www.usdoj.gov/civil/home.html*) or by written request to the address in this section. These minimum qualifications must be continually met for a broker who has been included on the list to remain included when the list is updated thereafter. The Declaration must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(2) Each broker must submit a new Declaration annually to be included on updated lists. For a broker to be included on the initial list to be established by May 1, 2003, the Torts Branch, Civil Division, must receive the broker's Declaration no later than April 24, 2003. If the broker wishes to be included on updated lists, the Torts Branch must receive a new Declaration from the broker between January 1 and April 10 of each successive calendar year. After the Declaration is completed and signed, the original must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. The Department of Justice will not accept a photocopy or facsimile of the Declaration.

(3) A Declaration will not be accepted by the Department of Justice unless it is complete and has been signed by the individual annuity broker requesting inclusion on the list. A Declaration that is incomplete or has been altered, amended, or changed in any respect from the Declaration at the Civil Division's Web site will not be accepted by the Department of Justice. Such a Declaration will be returned to the annuity broker who submitted it, and the Department of Justice will take no further action on the request for inclusion on the list until the defect in the Declaration has been cured by the annuity broker.

(4) The Department of Justice will retain a complete Declaration signed and filed by an annuity broker requesting to be on the list. Because this rule does not require the submission of any additional information, the Department retains discretion to dispose of additional information or documentation provided by an annuity broker.

(5) The Department of Justice will not accept a Declaration submitted by an annuity company or by someone on behalf of another individual or group of individuals. Each individual annuity broker who desires to be included on the list must submit his or her own Declaration.

(6) An annuity broker whose name appears on the list incorrectly may submit a written request that his or her name be corrected. An annuity broker whose name appears on the list may submit a written request that his or her name be removed from the list.

(7) To the extent practicable, a name correction or deletion will appear on the next revision of the list immediately after receipt of the written request for a name correction or deletion. A written request for a name correction or deletion must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Facsimiles will not be accepted.

(8) The list of annuity brokers established pursuant to this section will be updated periodically, but not more often than twice every calendar year, beginning in calendar year 2004.

(c) *Disclaimers.*

(1) The inclusion of an annuity broker on the list signifies only that the individual declared under penalty of perjury that he or she meets the minimum qualifications required by the Attorney General for providing annuity brokerage services in connection with structured settlements entered into by the United States. Because the decision to include an individual annuity broker on the list is based solely and exclusively on the Declaration submitted by the annuity broker, the appearance of an annuity broker's name on the list does not signify that the annuity broker actually meets those minimum qualifications or is otherwise competent to provide structured settlement brokerage services to the United States. No preferential consideration will be given to an annuity broker appearing on the list except to the extent that United States Attorneys utilize the list pursuant to section 11015(b) of Public Law 107–273.

(2) By submitting a Declaration to the Department of Justice, the individual annuity broker agrees that the Declaration and the list each may be made public in its entirety, and the annuity broker expressly consents to such release and disclosure of the Declaration and list.

Dated: April 8, 2003.

John Ashcroft,

Attorney General.

Appendix

Declaration

[This Appendix will not appear in the Code of Federal Regulations]

I, _____, have carefully reviewed the Department of Justice regulation contained in 28 CFR 50.24 and published in the **Federal Register** on April 15, 2003, and I understand the minimum qualifications set forth in 28 CFR 50.24. I declare that I meet the minimum qualifications for inclusion on the Department of Justice's list of annuity brokers. Specifically, I declare each of the following to be true, accurate, correct, and complete as of the date this Declaration is signed:

a. I am currently licensed by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

b. I am currently licensed or appointed by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker;

c. I am currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

d. I have never had a license to be a life insurance agent, producer, or broker revoked, rescinded, or suspended for any reason or for any period of time;

e. I have never been convicted of a felony; and

f. I have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.

By submitting this Declaration to the Department of Justice, I am agreeing that this Declaration and the list of brokers each may be made public in its entirety, and I expressly consent to the release and disclosure of the Declaration and the list.

I declare under penalty of perjury that the foregoing is true, accurate, complete, and correct. 28 U.S.C. 1746.

Executed on this _____ day of _____, 2 _____.

_____

(Signature of Individual Broker Making Declaration)

_____

(Print Full Name of Individual Broker Making Declaration)

_____

(Street or Post Office Box)

_____

(City, State, and Zip Code)

After completing and signing this Declaration, mail the Declaration to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

[FR Doc. 03–9021 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–12–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.90 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions are unchanged from those in effect for April 2003.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for April 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 115, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent	Deferred annuities (percent)				
	On or after	Before		i_i	i_2	i_3	n	n_2
*	*	*	*		*	*		*
115	5–1–03	6–1–03	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 115, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent	Deferred annuities (percent)				
	On or after	Before		i_i	i_2	i_3	n	n_2
*	*	*	*	*		*		*
115	5–1–03	6–1–03	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The value of i_t are—					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*		*
May 2003	.0490	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of April 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–9192 Filed 4–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–013]

Drawbridge Operation Regulations; Bayou LaLoutre, Ycloskey, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Ycloskey Vertical Lift Span Highway Bridge across Bayou LaLoutre, mile 22.9, at Ycloskey, St. Bernard Parish, LA. This deviation allows the bridge to remain closed to navigation from May 6, 2003, through May 8, 2003. The deviation is necessary to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 9 a.m. on May 6, 2003, through 3 p.m. on May 8, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to repair two clutches and damaged electrical circuits of the vertical lift span bridge across Bayou LaLoutre at mile 22.9 at Ycloskey, St. Bernard Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. on Tuesday, May 6, 2003, through 3 p.m. on Thursday, May 8, 2003.

The vertical lift span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 3.0 feet Mean Sea Level and 4.5 feet above mean low water, elevation 1.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mostly of fishing, shrimp and trawl boats. This three day closure will not have a significant effect on these vessels. This closure has been scheduled so as to have the least impact on navigation by scheduling the work in the middle of the week for recreational boaters and outside the trawling season for commercial fishermen. The bridge normally opens to pass navigation an average of 700 times per month during the trawling off-season. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

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

Dated: April 4, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–9082 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–013]

RIN 1625–AA00

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Coronado Bay Bridge.

These temporary security zones are needed for national security reasons to protect the public ports from potential subversive actions. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12:01 a.m. (P.S.T.) on March 22, 2003, until 11:59 p.m. (P.D.T.) on June 22, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP San Diego 03–013) and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), for the reasons set forth below, the Coast Guard finds that good cause exists for not publishing an NPRM. Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September, 11, 2001 attacks, and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Moreover, the Secretary of the Department of Homeland Security and the Attorney General recently elevated the Threat Level to Orange-High Condition. A High Condition is declared when there is a high risk of terrorist attacks. As a result, many agencies, like the Coast Guard, that will be a part of the new Department of Homeland Security on March 1, are taking additional steps to increase their protective measures. Under High Condition, among other things, federal agencies are to consider the following protective measures: Coordinate necessary security efforts with Federal, State, and local law enforcement agencies, National Guard or other security and armed forces; and restrict access to a threatened facility to essential personnel only. As a result, a heightened level of security has been established around the Coronado Bridge. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals on or near the Coronado Bridge. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war with Iraq have made it prudent to U.S. ports to be on higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard is establishing security zones around the Coronado Bridge. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on these bridges would have on the public the transportation system and surrounding areas and communities, security zones are prudent for these structures.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing fixed security zones extending from the surface to the sea floor, 25 yards in the waters around all piers, abutments, fenders and pilings of the Coronado Bridge, San Diego Bay, California. Entry into these security zones is prohibited, unless doing so is necessary for safe navigation, or to conduct official business such as scheduled maintenance or retrofit operations. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is issued under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This 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 Homeland Security (DHS).

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a

case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, their crews and passengers, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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 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 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

We have analyzed this 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new § 165.T11–032 to read as follows:

§ 165.T11–032 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All waters extending from the surface to the sea floor, 25 yards around all piers, abutments,

fenders and pilings of the Coronado Bay Bridge on the navigable waters of San Diego Bay. This security zone will not restrict the main navigational channel and vessels will not be restricted from transiting through the channel.

(b) *Effective Period.* This section is effective from 12:01 a.m. (PST) on March 22, 2003 until 11:59 p.m. (PDT) on June 22, 2003. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination of this section, the Captain of the Port will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, loitering, or anchoring within this security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zones will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted on San Diego Bay via VHF–FM channel 16.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 21, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–8946 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7482–3]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for Final authorization of its revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization, and is authorizing the State's revisions through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because it believes this action is not controversial and does not expect adverse comments. Unless the EPA receives adverse comments which oppose this authorization during the comment period, the decision to authorize the State of Texas' revisions to their hazardous waste program will take effect. If adverse comments are received, the EPA will publish a document in the **Federal Register** either: withdrawing this immediate final decision; or a notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

DATES: This immediate final rule is effective on June 16, 2003, unless EPA receives adverse written comment by May 15, 2003. Should the EPA receive such comments, it will publish a timely document either: withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number TX–01–02, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 1145 Ross Avenue, Dallas Texas 75202–2733. Copies of the State of Texas program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Texas Commission on Environmental Quality (TCEQ), 12100 Park S. Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Texas subject to RCRA will now have to comply with the authorized State requirements (in RCRA Clusters VII through X listed in this document) instead of the equivalent federal requirements in order to comply with RCRA. Texas has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports; (2) enforce RCRA requirements and suspend or revoke permits; and (3) take enforcement actions after notice to, and consultation with the State . This action does not impose additional requirements on the regulated community because the regulations for which Texas is being authorized by today's action are already effective, and are not changed by today's action.

C. What Has The State Of Texas Previously Been Authorized For?

Texas received final authorization to implement its Hazardous Waste Management Program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** on January 31, 1986, effective October 4, 1985 (51 FR 3952); on December 18, 1986, effective February 17, 1987 (51 FR 45320). EPA authorized the following revisions: March 1, 1990, effective March 15, 1990 (55 FR 7318); on May 24, 1990, effective July 23, 1990 (55 FR 21383); on August 22, 1991, effective October 21, 1991 (56 FR 41626); on October 5, 1992, effective December 4, 1992 (57 FR 45719); on April 11, 1994, effective June 27, 1994, (59 FR 16987); on April 12, 1994, effective June 27, 1994 (59 FR 17273); September 12, 1997, effective November 26, 1997 (62 FR 47947); and on August 18, 1999, effective October 18, 1999 (64 FR 44836) and July 13, 2000, effective September 11, 2000 (65 FR 43246). EPA incorporated by reference the State of Texas Base Program and additional program revisions in RCRA Clusters III and IV into the CFR on September 14,

1999 (64 FR 49673); effective November 15, 1999.

On March 28, 2002, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18, of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented in the Attorney General Statement. The TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. *Id.* Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ. For further legislative history on the name-change (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, section 18.01, 2001 Tex. Gen. Laws 1985).

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste, under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health & Safety Code). The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handing, transportation, reclamation, or disposal of waste materials (both hazardous and non hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. See, Tex. Water Code Ann. section 26.131 and Ch. 27 (Vernon 2000). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 Tex. Admin. Code section 3.8(a)(30) and at 30 Tex. Admin. Code section 335.1. Such wastes are termed ''oil and gas wastes.'' The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer those waste under RCRA. When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998. The MOU clarified the jurisdictional boundaries between the agencies for the management and regulation of waste associated with exploration, development, production and refining of oil and gas. The MOU has been adopted by rule, which is an adoption by reference of the RRC's rule, and describes the division of responsibilities as well as the procedures for coordination between the two agencies. See, TCEQ's rule 30 Tex. Admin. Code section 7.117 and RRC's rule at 16 Tex. Admin. Code section 3.30.

The TCEQ has the rules necessary to implement EPA's RCRA Clusters VII through X revisions to the Federal Hazardous Waste Program promulgated from July 1, 1995, to June 30, 2000. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Government Code Annotated section 311.027 (Vernon 1998) and adoption of the hazardous waste rules in general are pursuant to the following statutory provisions: (1) Tex. Water Code Ann. section 5.103 (Vernon 2000), effective September 1995, as amended, (TCEQ's authority to adopt any rules necessary to carry out its powers and duties); (2) Tex. Health & Safety Code Ann. section 361.024 (Vernon 2001), effective September 1, 1995, as amended (authority to adopt rules necessary to ''establish minimum standards of operation for the management and control of solid waste''); and (3) Tex. Health & Safety Code Ann. section 361.078 (Vernon 2001), effective September 1, 1989 (specifically recognizing TCEQ's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization). The TCEQ partially adopted the Hazardous Remediation Waste Management Requirements (HWIR-Media). The following are the federal rules: 40 CFR 260.10, 261.4(g) through 261.4(g)(2)(ii), 264.1(j)(3)(i) through 264.1(j)(3), 264.554 through 264.554(m), 265.1(b), 268.2(c), 268.50(g) and 270.42 Appendix I because the HWIR-Media rule is an optional rule, States can partially adopt the rule if the State has in place other mechanism to address those hazardous waste. The TCEQ did not adopt 40 CFR 270.11(d)(1)–(3), 270.68, 270.73(a), 270.79, 270.80(a)–(f), 270.85(a)–(c), 270.95, 270.100, 270.105, 270.110 introduction through 270.110(i), 270.115, 270.120, 270.125, 270.130(a)–(b), 270.135 introduction through 270.135(c), 270.140 introduction through 270.140(c), 270.145(a) introduction through 270.145(d)(3), 270.150(a)–(g), 270.155(a) introduction through 270.155(b), 270.160 introduction through 270.160(c), 270.165, 270.170, 270.175(a) introduction through 270.175(c), 270.180(a)–(b), 270.185, 270.190(a)–(d), 270.195, 270.200, 270.205, 270.210 introduction through 270.210(b), 270.215(a), 270.215(a)–(d), 270.220(a)–(b), 270.225, and 270.230(a) through 270.230(e)(2). However, the TCEQ has a Office of Remediation which is responsible for the cleanup of releases of hazardous waste and pollutants so that threats to human health and the environment are controlled or eliminated. The TCEQ rules which address the Remedial Action Plan requirement of the HWIR-media rule are covered in the Texas Risk Reduction Program rules at 30 Tex. Admin. Code Ch. 350 and 30 Tex. Admin. Code section 350.75.

D. What Changes Are We Authorizing With Today's Action?

The State of Texas applied for final approval of its revision to its complete program in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1995, to June 30, 2000 (RCRA Clusters VII through X). Texas requirements are included in a chart with this document. The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Texas final authorization for the following program revisions:

Federal citation	State analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs; [61 FR 34252] July 01, 1996. (Checklist 153).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.78(f)(3)(A)–G and (g)(3)(A)–(G), effective October 19, 1998.
2. Hazardous Waste Treatment; Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments and Containers; [61 FR 59931] November 25, 1996; [59 FR 62896] December 6, 1994; [60 FR 26828] May 19, 1995; [60 FR 50426] September 29, 1995; [60 FR 56952] November 13, 1995; [61 FR 4903]; [61 FR 28508] June 5, 1996]. (Checklists 154, 154.1, 154.2, 154.3, 154.4, 154.5, and 154.6).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2002), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.31, effective November 15, 2001, as amended; section 335.24(e), and, effective April 4, 1999, as amended, section 335.69(f)(2), 335.69(a)(1)(A)–(B), effective November 15, 2001, as amended; section 335.152(a)(1), 335.152(a)(4), 335.152(a)(7)–(9), 335.152(a)(16)–(19), effective November 18, 2001; 335.111(a), effective November 15, 2001; 335.112(a)(1), 335.112(a)(4), 335.112(a)(8)–(10), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001; 305.122(a), effective November 15, 2001, as amended and 305.50(a)(A), effective November 18, 2001, as amended.
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.341(c), effective April 30, 2000.
4. Military Munitions Rule; Hazardous Waste Identification and Management Explosives Emergencies; Manifest Exemptions for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1, and 335.61, effective April 12, 2001, as amended; section 335.10(h), effective May 20, 1999, 335.91(f), and (g), 335.41(d)(2), effective April 12, 2001, as amended, 335.271, 335.272, effective April 12, 2001, as amended, 335.271, 335.272, effective April 12, 2001, as amended; 335.152(a)(4), 335.152(a)(20), 335.112(a)(4), 335.112(a)(22), effective November 18, 2001, as amended and 305.69(j) effective April 12, 2001, as amended.
5. Land disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 30 Texas Administrative Code section 335.1 (definition of solid waste), effective May 30, 2001, as amended; 335.17(a)(9)–(12), and 335.24(c)(2), effective April 4, 1999. The State law is more stringent than the Federal rule because the State does not have provisions equivalent to 40 CFR 268.(a)(10) regarding tolling agreements. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.

Federal citation	State analog
6. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.31, effective October 19, 1998; section 335.132(a)(17)–(18), 335.152(a)(22)(E), 335.112(a)(19)–(20), effective April 12, 2001; 335.221(a)(15), 335.221(17)–(18), effective April 4, 1999 and 335.221(a), effective April 4, 1999.
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, section 335.431(c)(1), effective April 20, 2000.
8. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, [62 FR 37694] July 14, 1997. (Checklist 160).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431(c), effective April 30, 2000.
9. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production, [62 FR 45568] August 28, 1997. (Checklist 161).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000.
10. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendments, [62 FR 64636] December 8, 1997. (Checklist 163).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.152(a)(1), 335.152(a)(4), 335.152(a)(17)–(19); 335.112(a)(1), 335.112(a)(4), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001, as amended; 305.50(4)(A), effective March 21, 2000.
11. Kraft Mill Steam Stripper Condensate Exclusion, [63 FR 18504] April 15, 1998. (Checklist 164).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste)(A)(iv), effective November 15, 2001.
12. Recycled Used Oil Management Standards; Technical Correction and Clarification, [63 FR 24963] May 6, 1998. (Checklist 166).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Chapter 371, effective September 1, 1991, as amended; 30 Texas Administrative Code section 3355.78(j), effective October 19, 1998; section 335.24(c)(4)(A)–(C), effective April 14, 1999; section section 324.1, 324.3, 324.6, 324.11–14, effective August 8, 1999.

Federal citation	State analog
13. Land Disposal Restrictions Phase IV–Treatment Standards for Metal Wastes and Mineral Processing Wastes, [63 FR 28556] May 26, 1998. (Checklist 167 A).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1,
14. Land Disposal Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167 B).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(f)(4)(C), effective March 18, 2001; section 335.431(c), effective November 15, 2001. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
15. Land disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167 C).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431(c), effective November 15, 2001 and section 335.431, effective April 30, 2000, as amended. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
16. Mineral Processing Secondary Material Exclusion, [63 FR 28556] May 26, 1998. (Checklist 167 D).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1,
17. Bevil Exclusion Revision and Clarification, [63 FR 28556] May 26, 1998. (Checklist 167 E).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001 as amended; 335.1 (definition of hazardous waste, effective January 26, 1994, as amended.
18. Exclusion of Recycled Wood Preserving Wastewater, [63 FR 28556] May 26, 1998. (Checklist 167 F).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001 as amended; 335.1 (definition of a hazardous waste, effective January 26, 1994, as amended.
19. Hazardous Waste Combustors Revised Standards [63 FR 33782] June 19, 1998. (Checklist 168).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001; section 305.69(i), 305.69(k), effective April 12, 2001; 305.51(a)(8), effective December 5,

Federal citation	State analog
20. Petroleum Refining Process, [63 FR 42110] August 6, 1998; [63 FR 54356] October 9, 1998. (Checklist 169 & 169.1).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of hazardous waste) effective January 26, 1994, as amended, 335.1(129)(A)(iv) (definition of a solid waste), effective May 30, 2001, as amended; 335.431, effective April 30, 2000, as amended.
21. Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Administrative Stay, [63 FR 46332] August 31, 1998. (Checklist 170).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000 as amended.
22. Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production, [63 FR 47409] September 4, 1998. (Checklist 171).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000, as amended.
23. Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, [63 FR 48124] September 9, 1998. (Checklist 172).	Texas Water Code Annotated section 5.103 (Vernon 2000), 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective November 15, 2001, as amended.
24. Land Disposal Restrictions—Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), [63 FR 51254] September 24, 1998. (Checklist 173).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as, amended; 30 Texas Administrative Code section 335.431(c), effective November 15, 2001.
25. Hazardous Remediation Waste Management Requirements (HWIR-Media), [63 FR 65874] November 30, 1998. (Checklist 175).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Heath & Safety Code Annotated section 361.078 (Vernon 2001) effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.1 (definition of staging pile), and 335.111(a), effective November 15, 2001; 335.431, effective November 15, 2001; and 335.152(a)(14), effective November 18, 2001.
26. Universal Waste Rule—Technical Amendments, [63 FR 71225] December 24, 1998. (Checklist 176).	Texas Waste Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001),
27. Organic Air Emission Standards: Clarification and Technical Amendments [64 FR 3382, January 21, 1999. (Checklist 177).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(a)(1)(A)–(B) effective March 18, 2001; 335.152(a)(17), (19) and (21), effective November 18, 2002.

Federal citation	State analog
28. Petroleum Refining Process Wastes—Leachate Exemption, [64 FR 6806] February 11, 1999. (Checklist 178).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended.
29. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, [64 FR 25408] May 11, 1999. (Checklist 179).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.1 (definition of solid waste), effective May 30, 2001; section 335.431(c), effective November 15, 2001.
30. Guideline for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act, [64 FR 26315] June 14, 1999. (Checklist 180).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Taxes Administrative Code section 335.31, effective November 15, 2001.
31. Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, [64 FR 36466] July 6, 1999. (Checklist 181).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of universal waste), effective May 30, 2001; section 335.2(1), effective April 30, 2000; section 335.41(j), effective April 12, 2001; section 335.151(b), effective February 22, 1994; section 335.261(a)–(b), effective April 30, 2000; and section 335.431(b)(3), effective November 15, 2001.
32. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements Technical Correction to Fast-track Rule (MACT Rule), [64 FR 52827] September 30, 1999; [64 FR 63209] November 19, 1999. (Checklist 182 & 182.1).	Texas Water Code Annotated section 51.03 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 200), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (129)(A)(iv) (Definition of solid waste), effective November 15, 2001, 335.152(a)(13), 335.112(a)(14), effective November 18, 2001; section 305.50(4)(A), section 305.69(i), effective November 15, 2001; section 335.1 (definitions), 335.221(a), 335.221(a)(1), 305.50(4)(A), 305.571(b), and 335.222(a)(c), effective November 15, 2001.
33. Land Disposal Restrictions Phase IV—Technical Corrections, [64 FR 56469] October 20, 1999. (Checklist 183).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.431(c) effective November 15, 2001.
34. Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation time. [65 FR 12378] March 8, 2000. (Checklist 184).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(j)–(l) effective March 18, 2001.

Federal citation	State analog
35. Organobromine Production Waste, [65 FR 14472] March 17, 2000. (Checklist 185).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a — —
36. Organobromine Production Waste and Petroleum Refining Process Waste; Technical Correction, [65 FR 36365 June 8, 2000. (Checklist 187).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (Definition of a hazardous waste), effective January 26, 1994, as amended; section 335.431(c) effective November 15, 2001.

E. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Affect Delegation of This Standard to Texas Commission on Environmental Quality's Authorization?

In this authorization document, the State of Texas is also seeking authorization for the Post-Closure Permit Requirement and Closure Process, (Checklist 174). On September 30, 1999, the EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories waste combustors (HWCs): Incinerators, cement kilns and light-weight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (CAA) and (RCRA). Before this rule went into effect, the air emissions from these three types of HWCs were primarily regulated under the authority of RCRA (*see* 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (*see* 40 CFR part 63 subpart EEE), the air emissions from these sources are now regulated under RCRA and the CAA. Even though both statutes give the EPA the authority to regulate these emissions, the EPA has determined that having emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, the EPA deferred the RCRA requirements for HWC emission controls to the CAA requirements of 40 CFR part 63 subpart EEE.

Therefore, with today's authorization of the State of Texas for the RCRA provisions of the September 30, 1999, HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63 subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (*See* the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessment at 64 FR 52828, pages 52839–52843, September 30, 1999, and RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June, 2000, for more information.

E. What Decisions Has the EPA Made?

The EPA concludes that Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, the EPA grants Texas final authorization to operate its hazardous waste program with the changes described in the authorization application. Texas has the responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

The EPA considers the following state requirement to be more stringent than the federal: The state law is more stringent than the federal rule because the State does not have provisions equivalent to 40 CFR 268.(a)(10) regarding tolling agreements. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may approve a variance from an applicable treatment standard. In this authorization, there are no broader in scope provisions. The EPA cannot enforce broader in scope requirements.

G. Who Handles Permits After This Authorization Takes Effect?

The State will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Texas is not yet authorized.

H. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and does not expect comments that oppose this action. The EPA is providing an opportunity for public comment in the proposed rules section of today's **Federal Register**, where we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number TX–01–02. We must receive your comments by May 15, 2003. You may not have an opportunity to comment again. If you want to comment on this action. You must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments which oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

K. When Will This Approval Take Effect?

Unless EPA receives comments that oppose this action, this final authorization approval will become effective without further notice on June 16, 2003.

L. Where Can I Review the State's Applications?

You can view and copy the State of Texas' application from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses: Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized Hazardous Waste Program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart SS for this codification of Texas' program changes until a later date.

Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final 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.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action 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 merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approves under 40 CFR part 271, 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 action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (1999)), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249(2000)).

This action also is not subject to Executive Order 13045 (62 FR 19885 (1997)), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344 (2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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 prior to publication 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). This action will be effective on June 16, 2003.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–9044 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1062, MB Docket No. 02–375, RM–10605]

Digital Television Broadcast Service; Jackson, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Two Ocean Broadcasting Company, substitutes DTV channel 4 for DTV channel 14 at Jackson, Wyoming. *See* 67 FR 78215, December 23, 2002. DTV channel 4 can be allotted to Jackson, Wyoming, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43–20–42 N and 110–45–10 W. with a power of 1, HAAT of 300 meters and with a DTV service population of 21 thousand. With this action, this proceeding is terminated.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–375, adopted April 2, 2003, and released April 11, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 3.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Wyoming, is amended by removing DTV channel 14 and adding DTV channel 4 at Jackson.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9162 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1053, MM Docket No. 00–246, RM–9859]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KRTV Communications, Inc., substitutes DTV channel 7 for DTV channel 44 at Great Falls, Montana. *See* 65 FR 79048, December 18, 2000. DTV channel 7 can be allotted to Great Falls, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–32–09 N. and 111–17–02 W. with a power of 160, HAAT of 180 meters and with a DTV service population of 91 thousand. Since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–246, adopted March 31, 2003, and released April 9, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 44 and adding DTV channel 7 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9161 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1077; MB Docket No. 02–365; RM–10451]

Radio Broadcasting Services; Laramie, WY and Timnath, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed by Laramie Mountain Broadcasting, L.L.C., licensee of Station KIMX, Laramie, Wyoming, this document

reallots Channel 288C2 from Laramie, Wyoming, to Timnath, Colorado, as that community's first local aural transmission service. Prior to submission of its rule making request, petitioner's authorization for Station KIMX(FM) was amended by grant of a one-step application to specify operation on Channel 288C2 at Laramie, Wyoming, instead of Channel 288C3. The FM Table of Allotments has not been amended previously to reflect the higher class substitution at Laramie. Additionally, the authorization for Station KIMX(FM) is modified, as requested. *See* 68 FR 1586 (2003), January 13, 2003. Coordinates used for Channel 288C2 at Timnath, Colorado, are 40–44–31 NL and 105–14–25 WL, representing a transmitter site 31.9 kilometers (19.8 miles) northwest of the community. The specified site location is within the protected areas of the Table Mountain Radio Receiving Zone, Boulder County, Colorado, and requires compliance with section 73.1030(b) of the Commission's rules. With this action, this docketed proceeding is terminated.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–365, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Timnath, Channel 288C2.

■ 3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 288C3 at Laramie.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9167 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1076; MM Docket No. 01–62, RM–10053, RM–10109, RM–10110, RM–10111, RM–10112, RM–10113, RM–10114, RM–10116]

Radio Broadcasting Services; Ardmore, AL, New Hope, AL, Pulaski, TN and Scottsboro, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration and Joint Request for Approval of Option Agreement filed by STG Media, LLC and Pulaski Broadcasting, Inc. directed to the *Report and Order* in this proceeding which allotted Channel 278A to New Hope, Alabama. In doing so, it denied a proposed substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, reallotment of Channel 252C1 to Ardmore, Alabama, and modification the license of Station WKSR to specify operation on Channel 252C1 at Ardmore. *See* 67 FR 59213, September 20, 2002. STG Media was the proponent for the Channel 278A allotment at New Hope, and Pulaski Broadcasting is the licensee of Station WKSR, Pulaski, Tennessee. In the Petition for Reconsideration, STG Media withdraws its interest in the Channel 278A allotment at New Hope, contingent upon approval of the Option Agreement by which STG Media would acquire Station WKSR and that Station WKSR be licensed as a Class C1 facility licensed to Ardmore. In denying the Petition for Reconsideration, the Commission determined that the Option Agreement was inconsistent with Section 1.420(j) of the Rules. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–62, adopted April, 2 2003, and released April 4, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202)863–2898, or via e-mail *qualixint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9163 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects; Defect and Noncompliance Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds to some of the issues raised by petitions for reconsideration of some of the provisions of the final rule published on July 10, 2002, that implemented the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety. The issues responded to in this document primarily relate to field reports, one-time historical reports, and multiple ''substantially similar'' platforms.

This document also clarifies several other provisions of the final rule. The agency's response to petitions for reconsideration of other provisions of the final rule will appear in a future notice.

DATES: Effective Date: The effective date of the amendments made by this final rule is May 15, 2003. Applicability Dates: Various provisions of this final rule are applicable on the dates stated in the regulatory text. *See* 49 CFR 579.28. Petitions for Reconsideration: Petitions for reconsideration of amendments made by this final rule must be received not later than May 30, 2003.

ADDRESSES: Petitions for reconsideration of any amendments made by this final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. *See* section VI ''Privacy Act Statement'' for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information.

Petitions for reconsideration of the EWR rule were filed on or before August 26, 2002, by the Alliance of Automobile Manufacturers (the Alliance), General Motors Corporation (GM), the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), the Recreational Vehicle Industry Association (RVIA), and the Juvenile Products Manufacturers Association (JPMA).

GM and NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002, relating to the threshold for full reporting. On November 23, 2002, NATM filed a petition for rulemaking to delay the initial reporting date under the rule, as did NTEA and RVIA jointly, on December 5, 2002. Additional untimely comments were filed by Public Citizen on November 26, 2002, and Stephen E. Selander on November 27, 2002. To the extent appropriate, given their untimeliness, we will address the late-filed comments in a future notice.

On October 10, 2002, the Alliance wrote to NHTSA requesting that certain issues it had raised in its petition be treated on a prioritized basis. It separated its issues into three groups and explained that ''Generally, those issues given a priority '1' rating are those that require resolution to allow Alliance members to effectively plan and efficiently execute actions needed to develop compliant reporting systems.'' These issues concerned field reports, in-plant inspection records and other documents, one-time historical reports, and multiple ''substantially similar'' platforms. After reviewing the Alliance's comments and letter of October 10, the agency has concluded that granting this request may aid in an orderly implementation of the final rule and is issuing this notice addressing the Alliance's priority ''1'' issues.

We will address the Alliance's priority ''2'' and ''3'' issues in the future. We will also address other issues that were timely raised by the other petitioners for reconsideration.

II. Petitions Regarding Field Reports

The final rule defined ''field report'' as a ''communication * * * regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment * * * regardless of whether verified or assessed to be lacking in merit. * * *.'' It excluded ''a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle, component, or system at issue in the litigation.'' This reflected an attempt both to recognize the work product exclusion under the rules of evidence and to address it in a simplified manner based on the existence of a litigation file. We thought that this approach would have appeal because overall it would provide approximately the same coverage as a rule strictly based on the work product case law and would not require document by document review. The Alliance, however, asserted that this exclusion is too narrow and should be broadened to state that the definition ''does not include documents that were prepared in anticipation of litigation.'' Similarly, GM commented that ''documents prepared at the request of counsel, whether outside counsel or in-house attorneys, are also privileged if the work was done in anticipation of a lawsuit being filed.'' It asked the agency ''to reconsider its decision to use the filing of a civil complaint as a litmus test for determining whether or not a document is privileged.'' As GM recognized in a comment, the vast majority of field reports do not have any work product or privilege issues associated with them.

There is no need for this notice to provide a detailed discussion of the work product doctrine, given the facts that only a small minority of field reports would be considered work product and that the doctrine is well established under Federal law. We refer the reader generally to Edna Selan Epstein, *The Attorney—Client Privilege and the Work Product Doctrine* (3d Ed. 1997), published by the American Bar Association. In short, the work product exclusion applies to (1) documents in the broad sense of the word, (2) prepared in anticipation of litigation, where there is a reasonable prospect of litigation, and not for some other purpose such as a business practice, and (3) prepared or requested by an attorney or an agent for an attorney.

The Alliance's proposed modification to the definition of field report presents several problems. First, it does not expressly recognize that two mutually exclusive options have been considered: (1) A simplified approach based on the existence of a litigation file, as published on July 10, 2002, and (2) an approach based on the work product case law, which was advanced by the petitions for reconsideration. We will, as suggested by the petitions, adopt the latter approach in lieu of the simplified approach. Second, the Alliance's recommended exclusion is too broad, since it does not include some required elements of the work product doctrine. For example, more is required to meet the criteria for the exclusion than that a document has been created in anticipation of litigation.

Finally, we wish to underscore that the document truly must have been prepared ''in anticipation of litigation.'' The Alliance's comment indicates that, in its opinion, counsel may anticipate litigation ''after a claim is made, but prior to the filing of a lawsuit, or after the filing of a ''notice'' that a ''claim'' might be asserted.'' GM suggested that the work product exclusion cover reports prepared in anticipation of litigation after a claim has been filed and, although it would be less frequent, before a claim has been filed. In practice, reports prepared after a claim has been filed ordinarily would be more likely to be covered by the work product exclusion than reports prepared after a ''notice'' was received by a manufacturer. Under the early warning rule, § 579.4(c), ''claim'' includes a

demand in the absence of a lawsuit and a complaint initiating a lawsuit. The definition of ''notice'' refers to ''a document * * * that does not include a demand for relief.'' We expect that many notices would not satisfy the requirements for the work product exclusion.

Accordingly, we have granted the petitions for reconsideration on this issue, and are amending the definition of ''field report'' to delete the final phrase ''but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle component, or system at issue in the litigation.'' In its place we are adding the phrase ''but does not include a document covered by the attorney-client privilege or the work product exclusion.'' We are adding a separate definition of ''work product'' as meaning ''a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney.''

GM commented that, were we to exclude field reports prepared in anticipation of litigation, its burden of preparing the one-time historical report would be substantially lessened. The agency's amendment, therefore, will lessen the burden on all manufacturers who must prepare the historical report (see discussion in Section IV below on historical reports).

Further exclusions were also requested. GM and the Alliance asked the agency to clarify that field reports do not include ''data concerning vehicles that are still within a manufacturer's direct control'' and, consistent with defect notification requirements (§ 573.3(a)), only include reports on ''vehicles and equipment that have been transported beyond the direct control of the manufacturer.'' The commenters feared that ''field report'' could be interpreted to include ''quality data from assembly plants.''

We have considered these comments. We agree that the use of an existing regulatory phrase, ''beyond the direct control of the manufacturer,'' would be consistent with what we intended in requiring reports on field reports. By adding the words ''with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer,'' we clarify that quality data from assembly plants or port inspections would not be considered field reports.

Under the EWR rule, manufacturers of more than 500 motor vehicles per year must provide NHTSA with numbers of all field reports and copies of some field reports. The term ''field report'' is defined to include ''a communication * * * by an entity that owns or operates a fleet.'' ''Fleet,'' in turn, is defined as ''more than ten motor vehicles of the same make, model, and model year.'' The Alliance asserted that ''it is usually not obvious on the face of a written complaint from a customer or other person making the complaint whether that customer owns ten or more vehicles of the same make, model, and model year,'' because manufacturers do not know on any systematic basis how many vehicles a customer owns, with the possible exception of large fleets, such as rental car firms. In its view, it would be burdensome ''to require each manufacturer to check the ownership status of each customer who makes a written complaint * * * to determine whether that customer owns ten or more motor vehicles of the same make/model/year.''

We understand the Alliance's point, and want to clarify that manufacturers are obliged to provide fleet report information only for those fleets known to it. This is consistent with the TREAD Act's provision (49 U.S.C. 30166(m)(4)(B)) that a manufacturer does not have to maintain or submit records regarding information not in its possession. Accordingly we are amending the definition of ''field report'' to include written reports from ''an entity known to the manufacturer as owning or operating a fleet.''

The Alliance asked for confirmation that NHTSA will not consider any internal company correspondence about the subject of a field report, subsequent to the filing of the report, to be itself a reportable field report. The ''field'' is any location where a vehicle or equipment beyond the direct control of a manufacturer is located. Thus, we do not view the field as encompassing the company itself or its internal correspondence about a field report after it has been filed. However, our definition of ''field report'' would cover any further communication from the field in response to inquiries from the company for clarifications, further data, and the like on a field report that has been filed.

In light of the discussion above, we are redefining field report as follows:

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transferred beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney-client privilege or the work product exclusion.

III. Petitions Regarding One-Time Historical Reporting

Section 579.28(c) requires that certain manufacturers file separate reports providing information on the numbers of warranty claims or warranty adjustments and the number of field reports that they received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003, and for child restraint systems and tires manufactured after April 1, 1998, classified by the affected system or component, *e.g.*, electrical system, seat belts. The final rule defines ''warranty claim'' to include a claim paid by a manufacturer pursuant to good will. ''Good will,'' in turn, is defined as ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.''

The Alliance sought reconsideration of ''the requirement to count and categorize historic field reports into the reporting categories established in the final rule,'' as well as ''goodwill'' claims outside the warranty system. Even though the final rule does not require submission of hard copies of field reports for the one-time historical reporting, the Alliance asserted that the burden to review and categorize historic field reports nevertheless remains substantial, ''and falls disproportionately on those Alliance members whose field reports are not already coded or retained in a text-searchable format.'' The Alliance also asserted that requiring manufacturers to search through historic files ''to locate any 'goodwill' claims that were paid outside the warranty system or settlements of 'breach of warranty' claims/lawsuits'' would provide only a minimal benefit to the agency. The Alliance did not question the inclusion of these claims once reporting has begun. According to its comment, ''goodwill'' claims handled outside the

warranty system are, by definition, not in the already-coded warranty base, nor are settled claims for breach of warranty.

Based on the cost estimates submitted by the Alliance in response to the NPRM, the agency estimated the burden upon industry that one-time historical reporting of field reports might create. That burden was not very significant, compared to the burden that would have existed under the NPRM proposal regarding historical reporting. After the issuance of the final rule, the Alliance and GM now claim that the burden estimate that they previously submitted is substantially less than their real costs. Each argued that the effort required to extract the information is too high for the value of the reports rendered because the information will be obsolete in a short while. We disagree with that argument. We explained in the preamble to the July 10, 2002, final rule why we need to receive historic information. *See* 67 FR 45863. In short, we need historic information to be able to recognize changes in trends of experience with potential problems. We note that no commenter provided any specific information on the data, data systems, or categorization issues it may have or the numbers of these that would create the allegedly undue burden.

On the other hand, we agree to the Alliance's request that we exclude from historic reporting warranty claims that were not memorialized in a manufacturer's warranty system. Accordingly we are amending § 579.28(c) to require only reporting of warranty claims that are recorded in a manufacturer's warranty system. This will apply not only to warranty claims of motor vehicle manufacturers but also to warranty claims of child restraint systems, and warranty adjustments of tire manufacturers.

JPMA expressed a concern about the potential burden that the one-time historical reporting requirement of § 579.28(c) might cause its six members. In the context of this concern, we want to correct an inadvertent mistake in the final rule with respect to the historical reporting requirements applicable to child restraint system manufacturers. Based on JPMA's statement in its response to the NPRM that child restraint system manufacturers combine their warranty claim data and consumer complaint data in a single database that would be difficult to segregate, in the final rule we granted JPMA's request that manufacturers of child restraint systems be allowed to report these two categories of data together. *See* § 579.25(c) and 67 FR at 45850–51. As we made clear in the preamble to the final rule, the purpose of requiring one-time reporting of historical data was to allow the agency to compare current data with past data to identify any unusual or unexpected data points that might indicate the existence of a safety problem. Unfortunately, the language of § 579.28(c) did not reflect the fact that child restraint system manufacturers would prospectively be combining consumer complaint data with warranty data. (Similarly, as pointed out by RMA in its petition, that section did not reflect the fact that tire manufacturers will not be submitting field report data in their forthcoming quarterly reports, so there is no need to require them to submit historical data on field reports.) Therefore, we are revising § 579.28(c) to apply appropriate historical data reporting requirements for vehicle, child restraint system, and tire manufacturers, respectively.

JPMA asserted that NHTSA had greatly underestimated the total industry time (2,540 hours) and expense ($117,531) to comply with § 579.28(c) as originally adopted. It estimated that its members alone would spend over 38,500 hours and $2 million to comply. The reason for this, according to JPMA, is that the industry's records are not automated to the degree that would permit easy preparation of this one-time report. In part, this is due to the fact that, as discussed above, customer complaints and warranty claims are ordinarily not differentiated and are maintained in the same database.

We believe that it is important to have historical information with respect to child restraint systems to permit us to identify potential safety problems. Historical field report data would not, in itself, allow a sufficient comparison. Therefore, to allow us to compare similar data over time, and to relieve the burden asserted by JPMA, we are amending sec. 579.28(c) to require child restraint system manufacturers to provide historical reports on the numbers of warranty claims ''and consumer complaints (added together).''

IV. Petitions Regarding Multiple ''Substantially Similar'' Platforms

The Alliance sought clarification on how it should handle the reporting of a foreign fatality in a vehicle that has more than one ''substantially similar'' platform in the United States. The Alliance asserted, ''It would seem redundant and confusing to report the single fatality on each of the quarterly reports of all of the ''substantially similar'' U.S. platforms.'' It suggested that a manufacturer ''should be permitted to choose one of the ''substantially similar'' platforms and report the foreign fatality on that platform's quarterly report.''

We are rejecting this request. In their review of information to decide whether to open a defect investigation about a particular problem in a specific make/model of vehicles in the United States, the agency's screeners need to be aware of relevant information about the make/model. If a manufacturer could choose to report a relevant foreign fatality in its submission for only one U.S. model, the screeners would not be aware of that fatality when considering a different model. Moreover, the Alliance has not shown that this is a real problem and that if it does arise, that it is likely to occur with any significant frequency. We believe that a foreign fatality involving a foreign vehicle that has more than one substantially-similar U.S. platform will occur only infrequently, as there has been no showing that the number of multiple substantially similar platforms is other than small.

V. Miscellaneous Amendments; Clarifications

Following publication of the rule, we received a number of telephone calls asking questions about the meaning of various provisions. In some cases, this has prompted our consideration of whether some clarifications are needed.

We had a telephone call from a manufacturer of ambulances and buses asking for a clarification of its reporting duties. The manufacturer's annual ambulance production consisted of fewer than 500 units that are defined as light vehicles and more than 500 that are defined as medium-heavy vehicles (its bus production also exceeded 500 units). Section 579.27(a), providing limited reporting if annual vehicle production is fewer than 500 vehicles, ''applies to all manufacturers of motor vehicles that are not required to file a report pursuant to §§ 579.21 through 579.24 of this part.'' Because the manufacturer is required to file reports on its medium-heavy ambulances and buses pursuant to § 579.22, it questioned whether it was eligible to report on its light duty ambulances under § 579.27(a), or whether reporting for these vehicles should be included with reporting for the medium-heavy ambulances under § 579.22. We intend that § 579.27 apply to any vehicle category for which production is fewer than 500 units and we informed the manufacturer that it will file reports under § 579.27 for its light vehicle ambulances (however, its information on medium-heavy ambulances would be reported cumulatively with its information on buses). In view of the manufacturer's uncertainty, we are

amending § 579.27(a) to state that it ''applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part.''

Another manufacturer, also in a telephone call, raised the question of whether the reporting obligations encompassed vehicles that it leased or only those vehicles that it ''manufactured for sale, offered for sale, imported, or sold in the United States.'' We intended to cover all vehicles that the manufacturer produced which are operated on the public roads in the United States; *i.e.*, which have been introduced into interstate commerce, even if these are for lease or the manufacturer's own use. Accordingly, we are amending the introductory sentence of each of §§ 579.21–579.26 to remove the phrase quoted above and to replace it with the phrase that appears in 49 U.S.C. 30112(a): ''manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States.''

The definition of ''seats'' includes a reference to ''S9 of 209.'' There is no paragraph S9 in Federal Motor Vehicle Safety Standard No. 209, and we are removing the erroneous reference to S9 from the definition of ''seats.''

We note that the TREAD Act reimbursement final rule adopted a definition of ''rear-facing infant seat'' that differs from the one we adopted in the early warning final rule. See our full discussion of this issue at 67 FR 64056, October 17, 2002. In that discussion, we announced that we would adopt the reimbursement rule definition when we responded to petitions for reconsideration of the EWR rule, and we are amending the definition of ''rear-facing infant seat'' accordingly. We also note that the definition of ''minimal specificity'' refers to ''a child seat,'' rather than to the defined term ''child restraint system'' used elsewhere in the regulation. We are amending the definition of ''minimal specificity'' to replace ''child seat'' with ''child restraint system.''

Washington attorney Jim Pitts called our attention to the fact that there is no definition of ''model year'' for tires, yet § 579.26 requires tire manufacturers to provide information on tire model years. He found confusing the requirement that information be provided for ''the four calendar years prior to the earliest model year in the reporting period * * *.'' The definition of ''model year'' provides that ''For equipment, it means the year that the item was produced.'' However, as Mr. Pitts pointed out, the definition of ''equipment'' in the EWR final rule does not include tires. Accordingly, we are amending the definition of ''model year'' to clarify that ''For equipment and tires, [model year] means the year that the item was produced.'' As for the phrase that Mr. Pitts found confusing, we are amending § 579.26 to require information to be provided for ''the four calendar years prior to the reporting period.''

Section 579.5(d) requires each monthly submission of documents pertaining to notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications to be accompanied by a document identifying each communication in the submission by name or subject matter and date. The Alliance objected to this requirement as unduly burdensome. It commented that NHTSA has not required such a cover letter for these documents in the past and that the agency has not demonstrated a need to impose this new obligation. We have reviewed the past submissions of these and similar documents, and have concluded that we do not need the cover document to achieve our goals under the EWR rule. Accordingly, we are amending § 579.5(c) to remove the second sentence, which contains this requirement.

The amendments published on July 10, 2002, were effective on August 9, 2002, with early warning reporting to begin in 2003. Section 579.5(b) requires manufacturers to furnish NHTSA with a copy of certain documents relevant to early warning reporting, *e.g.*, communications relating to customer satisfaction campaigns, consumer advisories, recalls, or other safety activity involving the repair or replacement of motor vehicle or motor vehicle equipment. Section 579.5(d) requires information furnished under § 579.5(a) (former § 573.8) and § 579.5(b) to be submitted within five working days after the end of the month in which it was issued. Washington attorney, Carey Fleming, noted in a phone call that this requirement is inconsistent with NHTSA's preamble statement that documents furnished under § 579.5(b) ''will be due within 5 working days after the end of each month beginning with April 2003'' (p. 45864). Mr. Fleming is correct, and we are amending § 579.5(d) in accordance with our preamble statement to clarify that a document covered under § 579.5(b) and issued before April 1, 2003, need not be submitted. The first submittals under subsection (b) will be documents issued during April 2003 which will be due not later than May 7, 2003 (*i.e.*, the fifth working day after April 30).

Finally, Mark Schildkraut of New York City reminded us in a phone call that, in amending part 573 to redesignate § 573.5 through 573.7 as §§ 573.6 through 573.8, we forgot to make corresponding amendments to references to these sections in § 573.3(b), (c), (d), (e), and (f). We are correcting this oversight in this notice, as well as making conforming amendments to 49 CFR 577.5(a) and 577.10(a).

VI. Privacy Act Statement

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 (65 FR 19477), or you may visit *http://dms.dot.gov.*

VII. Rulemaking Analyses

Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''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.

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be

significant by the Office of Management and Budget under E.O. 12866 because of Congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for the rulemaking completed in July 2002 and filed in the docket. The changes made by this final rule on reconsideration are relatively minor and will reduce the burdens on manufacturers. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business. The changes made in this final rule on reconsideration are relatively minor and will reduce burdens on at least some small manufacturers.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have 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, as specified in Executive Order 13132.

Civil Justice Reform

This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843), pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this final rule on reconsideration are relatively minor, and should not affect paperwork burdens in a quantifiable way.

Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures as appropriate.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

These amendments to the final rule (67 FR 45822 at 45872–45883) are not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. It is

not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

List of Subjects

49 CFR Part 573

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

■ 2. Sections 573.3(b), (c), (d), and (e) are amended by revising the phrase ''§§ 573.5 and 573.6'' to read ''§§ 573.6 and 573.7.''

■ 3. Section 573.3(f) is amended by revising the references to ''§ 573.5'' and § 573.6'' respectively to read ''§ 573.6'' and ''§ 573.7'' respectively.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 4. The authority citation for part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

§ 577.5 [Amended]

■ 5. Section 577.5(a) is amended by revising the reference to ''§ 573.5(c)(9)'' to read ''§ 573.6(c)(9).''

§ 577.10 [Amended]

■ 6. Section 577.10(a) is amended by revising the reference to ''§ 573.6'' to read ''§ 573.7.''

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 7. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 8. Section 579.4(c) is amended by revising the definitions of ''field report, paragraph (2) of ''minimal specificity,'' the second sentence of ''model year,'' ''rear-facing infant seat,'' ''seats,'' and adding the definition of ''work product,'' to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

* * * * *

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney'client privilege or the work product exclusion.

* * * * *

Minimal specificity means:

* * * * *

(2) For a child restraint system, the manufacturer and the model (either the model name or model number), * * *

* * * * *

Model year * * * For equipment and tires, it means the year that the item was produced.

* * * * *

Rear-facing infant seat means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

Seats means all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Work product means a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney.

■ 9. Section 579.5(d) is revised to read as follows:

§ 579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

* * * * *

(d) Each copy shall be in readable form and shall be submitted not later than five working days after the end of the month in which it is issued. However, a document described in paragraph (b) of this section and issued before April 1, 2003, need not be submitted.

Subpart C—Reporting of Early Warning Information

■ 10. The first sentence of the introductory text of § 579.21 is revised to read as follows:

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 11. The first sentence of the introductory text of § 579.22 is revised to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles and buses manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 12. The first sentence of the introductory text of § 579.23 is revised to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 13. The first sentence of the introductory text of § 579.24 is revised to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 14. The first sentence of the introductory text of § 579.25 is revised to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

For each reporting period, a manufacturer who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported child restraint systems into the United States, shall submit the information described in this section. * * *

■ 15. The first and second sentences of the introductory text of § 579.26 are revised to read as follows:

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported tires in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production. * * *

■ 16. Section 579.27(a) is revised to read as follows:

§ 579.27 Reporting requirements for manufacturers with respect to vehicles not otherwise covered by this subpart, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

(a) *Applicability.* This section applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part, to all manufacturers of original equipment, to all manufacturers of replacement equipment other than manufacturers of tires and child restraint systems, and to registered importers registered under 49 U.S.C. 30141(c).

* * * * *

■ 17. Section 579.28(c) is revised to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(c) *One-time reporting of historical information.* No later than September 30, 2003:

(i) Each manufacturer of vehicles covered by §§ 579.21 through 579.24 of this part shall file separate reports providing information on the numbers of warranty claims recorded in the manufacturer's warranty system, and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model);

(ii) Each manufacturer of child restraint systems covered by § 579.25 of this part shall file separate reports covering the numbers of warranty claims recorded in the manufacturer's warranty system and consumer complaints (added together), and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for child restraint systems manufactured from April l, 1998 to March 31, 2003, and

(iii) Each manufacturer of tires covered by § 579.26 of this part shall file separate reports covering the numbers of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for tires manufactured from April 1, 1998 to March 31, 2003.

(2) Each report filed under paragraph (c)(1) of this section shall include production data, as specified in paragraph (a) of 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report as specified in paragraph (c) of 579.21 through 579.26 of this part.

* * * * *

Issued on: April 10, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–9199 Filed 4–10–03; 3:12 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030407078–3078–01; I.D. 040103A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 1,810 square nautical miles (nm^2) (3,354 km^2), east and southeast of Cape Cod, MA for 15 days and anchored gillnet fishermen are asked to remove their gear voluntarily from the Sliver Area of the Great South Channel Critical Habitat. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours April 10, 2003, through 2400 hours April 25, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long,

NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density within that area is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 23, 2003, NMFS Aerial Survey Team reported a sighting of 42 right whales in the proximity of 41° 41′ N lat. and 69° 48′ W long. This position lies east of Cape Cod, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Because the Seasonal Area Management (SAM) West zone, Cape Cod Bay Critical Habitat, and Great South Channel Critical Habitat overlap the DAM zone, these areas are excluded from the DAM zone. Thus, the DAM zone triggered on March 23, 2003, is divided into two sections: the Northeastern DAM and the Southern DAM.

NMFS has reviewed the factors and management options noted above relative to the DAM zone under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. NMFS requests voluntary restrictions within the DAM zone and Sliver Area because of the minimal amount of fishing gear in these waters during this time of year, and based on what we know about right whale migration, the animals should be moving into other protected areas such as the SAM zone and the Great South Channel Critical Habitat.

The DAM zone is bound by the following coordinates:

Northeastern DAM zone

41°14′N, 69°24′W (NW Corner)
41°48.5′N, 69°24′W
41°56.5′N, 69°04′W
41°14′N, 69°04′W

Southern DAM zone

41°33′N, 70°32′W (NW Corner)
41°24.5′N, 70°32′W and east along the coast to
41°21.5′N, 70°32′W
41°08′N, 70°32′W
41°08′N, 69°13′W
41°40′N, 69°45′W
41°45′N, 69°33′W
41°45′N, 69°56′W and returning to
41°33′N, 70°32′W along the coast

In addition, NMFS is requesting the voluntary removal of all gillnet gear from the Sliver Area of the Great South Channel Critical Habitat during the 15–day restricted period and asks anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The Sliver Area is bound by the following coordinates:

41°02.2′N, 69°02′W
41°43.5′N, 69°36.3′W
41°40′N, 69°45′W
41°00′N, 69°05′W

The voluntary restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator for Fisheries (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected

officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: April 9, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9222 Filed 4–10–03; 3:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 679

[Docket No. 020801186–3073–02; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to authorize and manage a subsistence fishery for Pacific halibut in waters in and off Alaska. This action is necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Effective on May 15, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall, or NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7172 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION: Management of the fisheries for Pacific halibut (Hippoglossus stenolepis, hereafter halibut) in waters in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the ''Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea'' (Convention), was signed at Ottawa, Canada on March 2, 1953, and amended by the ''Protocol Amending the Convention,'' signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act (16 U.S.C. 773c(c)). Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. The annual management measures for 2003 were published March 7, 2003 (68 FR 10989).

Section 773(c) of the Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. Such action by the Council is limited only to those regulations that are in addition to, and not in conflict with, IPHC regulations, and must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy.

The Council does not have a ''fishery management plan'' (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP amendment procedures set out in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Instead, a regulatory amendment process is followed. This process requires submission of the Council recommendation to the Secretary as a draft proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

The Council's recommended subsistence halibut policy was submitted for Secretarial review on May 30, 2002, and a proposed rule to implement the recommended policy was published in the **Federal Register** on August 26, 2002 (67 FR 54767). Comments on the proposed rule were invited through September 25, 2002. Fourteen letters were received that included 43 separate comments, which are summarized and responded to below.

The historical context of the Council's subsistence recommendation in October 2000, is summarized in the preamble to the proposed rule (on page 54768) and not repeated here. In April 2002, the Council adopted modifications to its original (i.e., October 2000) subsistence recommendation. These modifications will be the subject of a subsequent regulatory action. They were not included in the proposed rule published August 26, 2002 (67 FR 54767) and are not included in this final rule action.

The principal elements of the subsistence halibut rule are fully described and explained in the preamble to the proposed rule and for brevity are not repeated here. In brief, these elements include: (a) definition of ''subsistence'' and ''subsistence halibut,'' (b) specification of who is eligible to conduct fishing for subsistence halibut, (c) description of non-subsistence areas in which subsistence halibut fishing is not allowed, (d) definition of legal gear for harvesting subsistence halibut, (e) daily harvest limit of subsistence halibut, (f) annual monetary limit on customary trade of subsistence halibut, and (g) provisions for monitoring subsistence halibut harvests.

In addition, this action restructures certain halibut fishery regulations as described in the preamble to the proposed rule to better distinguish rules affecting IPHC regulatory Area 2C from those affecting the other IPHC areas off Alaska. This final rule is substantively the same as the August 26, 2002 proposed rule (67 FR 54767), except that certain technical changes have been made in response to comments received on the proposed rule. These changes are explained below in the response to the comments and in changes from the proposed rule.

Response to Comments

The Alaska Region, NMFS received 14 letters of comment from various

agencies, Alaska Native organizations, and individuals that contained 43 separate comments. The following summarizes and responds to these comments.

Comment 1: The State of Alaska Department of Fish and Game (ADF&G) strongly urges the harvest survey design to record harvest of all species from ADF&G groundfish statistical areas. This information (more detailed than harvest data based on IPHC areas) will be critical in the development of the future local area management plans and will provide management biologists with more specific information of the removals on a spatial scale each year when making in-season management decisions on commercial, sport, personal use, and State subsistence groundfish fisheries.

Response: The subsistence halibut harvest survey instrument was developed concurrently with the proposed rule to comply with the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13). Under the PRA, NMFS is obligated to minimize paperwork requirements and ensure that the affected public is not overly burdened with requests for information. The Federal Office of Management and Budget (OMB) oversees agency compliance with the PRA and must review and authorize each collection of information. Hence, NMFS must carefully balance its need for information from persons affected by its rules with the relative burden on the affected public of reporting that information.

The design of the subsistence halibut harvest survey instrument was guided by this balance. The survey is designed to be as unintrusive as possible to foster the cooperation of subsistence fishers and to capture the basic information needed of how much halibut was harvested, how much lingcod and rockfish was harvested incidental to subsistence halibut, generally where was it harvested, and whether it was caught in sport fishing or subsistence fishing. Collecting this much information from most of the registered subsistence fishers will vastly improve existing estimates of subsistence halibut harvest. Requesting more information and in finer detail throughout the State of Alaska could be viewed as being an excessive reporting burden. For example, NMFS would have to consider why the data on the geographic distribution of subsistence harvests of halibut should be more detailed than the geographic distribution data from sport fishing harvests of halibut, especially in light of the fact that subsistence harvests are estimated to be less than one tenth of the sport harvests.

NMFS agrees, however, that future management questions may arise in which data on the specific locality of subsistence halibut harvests are important. To this end, NMFS intends to work closely with the ADF&G Subsistence Division, affected tribes, and community groups to refine information on the location and species composition of subsistence halibut harvests. The survey instrument may be refined for this purpose in the future. In anticipation of refinements to the survey instrument, the OMB has authorized this survey for one year as a pilot information collection program. Renewal of OMB authority to conduct the subsistence halibut harvest survey under the PRA will depend on a review of the conduct of the survey and the quality of the data produced during the first year. Efforts to refine the data collected by the survey are likely best focused in certain parts of IPHC Areas 2C and 3A where subsistence, commercial, and sport halibut harvests will be higher relative to more western areas.

Comment 2: The harvest assessment survey design should include the number of lingcod and rockfish retained and released as well as separating rockfish by assemblage, such as ''pelagic species'' and ''other'' (demersal and slope) species.

Response: Based on the experience of ADF&G Subsistence Division personnel, the vast majority of the lingcod and rockfish caught incidental to subsistence halibut will be retained. This harvest of lingcod and rockfish while subsistence fishing for halibut would be reported in the annual subsistence halibut survey. Requesting more detailed information from subsistence fishers about the species composition of their incidental rockfish harvest raises the same PRA question of balance discussed above.

Comment 3: The definitions of ''commercial fishing,'' ''customary trade,'' and ''subsistence halibut'' do not sufficiently distinguish between sale and barter for commercial or subsistence purposes. It is not clear when the exchange of halibut for money is a commercial exchange or a subsistence exchange.

Response: The distinction between commercial fishing for halibut and subsistence fishing for halibut should be clear. Halibut harvested in commercial fishing are intended to enter commerce. The harvest, landing, and distribution of these fish must comply with relevant IPHC, State, and Federal fishing and reporting requirements. Halibut harvested in subsistence fishing are intended for the sustenance of the fisher, his family and community in accordance with cultural traditions of Alaska Natives and rural lifestyles. To preserve this distinction, this rule requires that subsistence halibut must not enter commerce and must not be intermixed with commercial fish, except under limited conditions in Areas 4D and 4E.

The definitions of ''commercial fishing'' and ''subsistence halibut'' were derived from the IPHC definition of ''commercial fishing'' which ''means fishing [other than customary and traditional fishing] the resulting catch of which is sold or bartered, or is intended to be sold or bartered''(67 FR 12885, March 20, 2002). ''Subsistence,'' on the other hand, is defined in this rule to be ''...the non-commercial, long-term, customary and traditional use of halibut.'' Subsistence halibut, however, may be used in customary trade because customary trade is a customary and traditional use of halibut. Customary trade may include bartering and limited exchanges of money, but this does not mean that any bartering or exchange of money necessarily implies a commercial transaction. Exchanging halibut for items of significant value or for sale or marketing purposes likely constitute a significant commercial enterprise. Such halibut would not be used in a customary and traditional manner and therefore would not be confused with subsistence halibut.

Comment 4: The proposed legal gear limit of ''set and hand-held gear of not more than 30 hooks'' does not specify whether this limit applies per person or per vessel.

Response: NMFS understands that the Council's original policy intent was for the hook limit to apply to each person engaged in subsistence halibut fishing. Although this was implied in the preamble to the proposed rule (67 FR 54767, August 26, 2002), NMFS agrees that the proposed rule language did not explicitly state whether the hook limit was to apply per person or per vessel. Therefore, NMFS changed the final rule to make this personal hook limit explicit.

Comment 5: The marking of buoys used in the subsistence halibut fishery should include a large ''S'' in addition to the fisher's name and address to designate that the gear is being used for Federal subsistence halibut fishing rather than a State commercial fishery.

Response: NMFS agrees that requiring an additional ''S'' character on the markings of setline marker buoys would serve a justifiable purpose of distinguishing subsistence gear from

commercial gear and has incorporated this requirement in the final rule.

Comment 6: Although the need for a subsistence halibut harvest in Alaska is recognized, the proposed rule should be changed. Without an annual limit on the harvest of each individual, a daily limit of 20 halibut per day, per person is unquestionably excessive. The subsistence halibut rules should include an annual individual harvest limit.

Response: The 20–halibut-per-day catch limit is not considered excessive in light of its purpose, which is to provide a reasonable daily catch limit for a subsistence fisher to supply food for his family and community. Proxy fishing is not provided for in this rule. Therefore, the daily catch limit should be sufficient to allow the fisher to supply fish to persons other than himself. Moreover, subsistence fishers typically do not harvest more fish than they actually need and will use. The customary and traditional practice of subsistence fishing does not include wasting fish.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council studied various alternative approaches and in April 2002, adopted a recommendation to NMFS to revise the 20–halibut-per-day catch limit in certain parts of IPHC regulatory areas 2C and 3A. This and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

Comment 7: The definition of ''customary trade'' wrongly suggests that the sale of any fish could be something other than a commercial activity and that $400 worth of halibut is not significant. Allowing the sale of subsistence halibut should be eliminated.

Response: NMFS disagrees. Customary trade is a customary and traditional use of halibut and should be an integral part of any subsistence policy. The Council recommended and NMFS approved this customary trade policy and the $400–per-year monetary limit because it was considered an insignificant amount. The Council determined and NMFS agrees that the $400 limit would allow a subsistence fisher to be reimbursed for the cost of his or her fuel or other incidental expenses incurred while subsistence fishing for halibut. Such customary trade can occur without subsistence halibut being deemed as entering commerce.

Comment 8: Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested and amounts of gear used should be required.

Response: The overall harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing will be estimated under this rule based on surveys of subsistence fishers. NMFS disagrees, however, that the estimation of subsistence harvests needs to be any more precise or the reporting requirements any more robust than those used for estimating the sport harvest of halibut which is estimated to be substantially larger than subsistence harvests.

Comment 9: These liberal subsistence rules will be unenforceable and will not prevent subsistence halibut from entering commercial venues. These rules could apply to the most remote and isolated rural areas without much risk of abuse, but in larger communities with road and airline connections, enforcement will be much more difficult if not impossible. In Sitka, for example, where a cash economy and subsistence harvest are blended in a population of many thousands, the individual harvest limit of 20 fish per day could result in hundreds of thousands of pounds being bartered for goods and services anywhere because the rule does not limit customary trade to the rural community where the fish are caught. This presents a potential to reduce or eliminate the volume of halibut available to commercial IFQ fishers.

Response: Enforcement of the subsistence rules in larger rural communities, such as Sitka, may be more challenging than in smaller rural communities. NMFS intends to cooperate with Alaska Native tribes and community organizations in publicizing subsistence halibut rules, and some Alaska Native tribes already have indicated their intent for their members to fully comply with the subsistence rules. Non-compliance likely would result in the Council recommending and NMFS approving more restrictive subsistence rules. NMFS further intends to monitor subsistence harvests in cooperation with State of Alaska, tribal and community agencies to provide reasonable estimates of fishing mortality from this fishery for conservation and management purposes. Although it is possible in theory for the subsistence fishery to preempt the commercial fishery, it is highly unlikely. Subsistence halibut harvests overall are expected to be about one percent or less of the total catch of halibut, substantially less than the sport halibut harvest and virtually insignificant compared to the commercial halibut harvest and other sources of halibut fishing mortality.

Comment 10: Subsistence fishers need to be able to set out 50 hooks overnight about four times a year, and need to trade or get money for about 200 pounds of fish four times a year.

Response: The Council considered alternative hook limits ranging from 2 to 60 hooks (see final EA/RIR/FRFA). Based on an analysis of the potential impacts of the alternative hook limits and public testimony, the Council recommended a 30–hook limit as a reasonable balance of the interests of subsistence and commercial fishers. Although some subsistence fishers may prefer no hook limit, most appear to find the 30–hook limit to be acceptable.

The rule specifies no limit on customary trade in terms of pounds of halibut that may be traded per year. The only specified limit on customary trade is on the amount of money that may be received by a subsistence fisher for subsistence halibut in a year. Subsistence halibut could be exchanged for goods other than money. In developing this policy, the Council chose not to recommend a non-monetary limit on the value of goods or services that may be exchanged in customary trade for subsistence halibut. The Council was clear, however, that it did not intend for items of significant value (*e.g.,* a new car or truck) to be traded for subsistence halibut, although it did not specify the meaning of ''significant value.'' Trading subsistence halibut for items of significant value would suggest a commercial enterprise, which is prohibited. Hence, 200 pounds of subsistence halibut could be exchanged in customary trade each year providing that any monetary payment for this fish does not exceed $400.

Comment 11: A recent survey conducted by the Yakutat Tlingit Tribe and Division of Subsistence (ADF&G) indicates halibut is the top subsistence species for the community of Yakutat.

Response: NMFS notes this indication of the importance of subsistence halibut in the community of Yakutat, Alaska.

Comment 12: There needs to be a valid subsistence halibut registration certificate to allow fishing for subsistence halibut. It is not clear, however, whether the requirement to ''hold'' a certificate means that a subsistence fisher must have the certificate in possession during fishing or to simply obtain a certificate prior to fishing.

Response: The proposed rule (67 FR 54767, August 26, 2002) at section

300.65(h) requires a subsistence halibut fisher to ''...possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut....'' Also in the proposed rule at section 300.66(e), subsistence halibut fishing would be unlawful unless the fisher ''...is qualified...and possesses a valid subsistence halibut registration certificate....'' NMFS agrees, however, that the term ''possess'' in this language does not indicate clearly if a subsistence fisher would be required to carry his or her registration certificate while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of ''possess'' by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip.

Comment 13: A multi-year registration would minimize paperwork for the affected fishers, however, it is not clear what would be the basis for determining that a fisher had ceased his subsistence fishing activity. Apparently, ceasing to fish is presumed when a fisher does not re-register for the certificate.

Response: A person eligible to do subsistence halibut fishing but who does not intend to do so presumably would not apply for a subsistence halibut registration certificate (SHARC). Also, a person who has a valid SHARC may fish for subsistence halibut one year but not in succeeding years in which the multi-year SHARC remains valid. The rate of such unused SHARCs in any year could be estimated from responses to the subsistence halibut harvest survey.

Comment 14: The conduct of the harvest survey is critical to obtaining an accurate estimate of subsistence harvest. No details of the harvest survey methodology are provided but its design must be statistically sound with validation procedures to produce a precise and unbiased estimate.

Response: NMFS agrees, and initially intends to contract with the Subsistence Division of the Alaska Department of Fish and Game to carry out the harvest survey. This work will be conducted by social scientists who are experienced in researching the subsistence use of fish and game throughout the State of Alaska. The survey instrument was designed to be simple to understand and easy to respond to, which should foster the cooperation of subsistence fishers. Also, the survey is designed to contact virtually all of those persons who have been issued SHARCs and actually harvested subsistence halibut.

Comment 15: Subsistence harvest estimates will be produced from a post-season survey of registered fishers which will be based on their memory of what they caught. Another approach could be the use of a catch record card (CRC). The CRC could be attached to the registration form, and catches would be recorded on it by the fisher. Each fisher would mail in his or her completed CRC following each subsistence season. Follow-up contact still would be made to determine the harvests of non-responders. The advantages of an annual CRC include: (1) initial harvest estimates are made without agency action based on returned CRC, (2) better harvest estimates are likely as fishers would be recording their harvests shortly after making them rather than several months later based on memory for the survey, (3) the CRC could be used as an independent check on a mail or phone survey of a random sample of registrants, and (4) the subsistence fishing community will be more precisely known each year as the annual registration and CRCs are applied for and distributed. A multi-year registration certificate could involve distributing multiple CRCs so that a CRC could be returned each year.

Response: The suggested CRC method for estimating subsistence harvests is a reasonable alternative to the survey methodology that NMFS intends to use, at least initially, but the CRC method would be slightly more complex and burdensome for the subsistence fisher. This burden may be justified in the future, based on experience with the survey method, but for now is deemed unnecessary. In response to the purported advantages: (1) agency action nevertheless would be required to record and calculate the data reported on the CRCs, (2) the CRC method may produce a marginal increase in the precision and accuracy of the subsistence halibut harvest estimates, but surveying registered fishers is the same methodology used to estimate sport halibut harvests in Alaska and it is not clear why the subsistence halibut fishery should be subjected to a more robust estimation procedure than the sport halibut fishery when the latter will likely harvest several times as many halibut as the former, (3) conducting a mail survey in parallel with a CRC requirement would substantially increase the reporting burden on affected fishers (see also response to comment 1), and (4) the SHARC system serves the same purpose, i.e. to distinguish the group of persons who intend to fish for subsistence halibut from the universe of those eligible to do so.

Comment 16: Language in the proposed regulatory text (at sec. 300.65(g)(3)) would prevent subsistence halibut fishing in the IPHC closed area in the Bering Sea. The closed area applies only to commercial fishing. Sport fishing is allowed in this area and subsistence fishing also would be acceptable.

Response: NMFS agrees that neither the Council nor the IPHC ever indicated that subsistence halibut fishing should be prohibited in the area of the Bering Sea adjacent to and south of IPHC Area 4E which is closed to commercial halibut fishing by the IPHC regulations (section 10 of the annual management measures at 67 FR 12885, March 20, 2002). The proposed rule included this unintended restriction because the closed area is not part of any of the IPHC regulatory areas defined in section 6 of the annual management measures. The regulatory text in this action, therefore, is changed to allow subsistence halibut fishing in the closed area.

Comment 17: The catch sharing plan described in the proposed regulatory text (at section 300.63) is for the 2001 fishery. In 2002, regulations provided for an incidental catch of halibut during the sablefish fishery north of Point Chehalis, WA.

Response: NMFS agrees that proposed regulatory text at section 300.63(b) pertaining to the Area 2A Catch Sharing Plan should be exactly as it existed in section 300.63(a) before this rule. The restructuring of section 300.63 was discussed in the preamble to the proposed rule (67 FR 54767, August 26, 2002). This restructuring is intended to have no effect on existing regulations implementing the Area 2A Catch Sharing Plan.

Comment 18: The proposed monitoring plan would identify harvest at the level of IPHC regulatory areas, which would not provide the level of resolution needed to develop a Local Area Management Plan (LAMP). Data collection for subsistence harvests would be more useful at a higher level of resolution, *e.g.,* groundfish statistical area.

Response: NMFS disagrees that subsistence harvest data should be reported geographically at the level of the ADF&G groundfish statistical areas for the same reasons presented in response to comment 1. NMFS agrees, however, that management questions may arise that will require more detailed information as to the locality of subsistence harvests than is provided at the level of IPHC regulatory areas.

Therefore, NMFS may refine the survey instrument to serve this purpose.

Comment 19: Subsistence harvesters should be required to possess a registration certificate while conducting subsistence fishing to provide enforcement staff with a means to directly verify the eligibility of a fisher on the water.

Response: NMFS agrees that the term ''possess,'' as used in the proposed rule at sections 300.65(h) and section 300.66(e), did not clearly indicate if a subsistence fisher would be required to have his or her registration certificate physically present while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of ''possess'' by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip (see response to comment 12).

Comment 20: Allowing subsistence halibut in a commercial buying or processing plant presents an unacceptable risk of subsistence fish getting into the commercial market. Subsistence halibut should not be allowed on the premises of commercial fish buyers, with the exception of the existing practice of landing small halibut with Area 4D and Area 4E CDQ fish and landed within a port in those areas.

Response: The risk of subsistence halibut getting into the commercial market also was a concern of the Council's in developing its subsistence policy. As discussed in the preamble to the proposed rule, the Council recommended prohibiting customary trade of subsistence halibut on the premises of commercial fish buying operations. The preamble discussion of this issue noted three exceptions to this prohibition. One was the exception noted in the comment. Another was an exception for a commercial fish buyer who is eligible to harvest subsistence halibut. And the third was an exception for using commercial fish processing facilities to process subsistence products. A related Council recommendation was to prohibit subsistence halibut that was exchanged in customary trade from entering commerce at any point. That is, subsistence halibut given away or bartered by the fisher who caught it, could not be subsequently sold or otherwise enter the commerce market. Due to the significance of this risk, NMFS specifically requested comments on how best to give effect to the intention of preventing movement of subsistence halibut into the commercial sector.

Neither of these prohibitions were explicitly stated in the proposed rule prohibitions. Language in proposed section 300.66(j), however, was designed to incorporate both of the Council's recommended prohibitions by stating that it would be unlawful to ''retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes''. The exception for Area 4D and Area 4E fishers to land small halibut with harvests of CDQ halibut is included in the prohibitions section 300.66(h). This regulatory language likely will be sufficient to enforce against the movement of subsistence halibut into commerce without complicated exception language.

Comment 21: The proposed subsistence program is significantly more permissive than is currently allowed under existing regulations. Hence, the rule would allow subsistence harvesters to significantly increase their fishing power which will likely lead to greater subsistence harvests than occur at present. This underscores the need for effective monitoring programs and more comprehensive reporting than is presented in the proposed rule.

Response: Previously, without the provisions of this rule, subsistence halibut harvesting fishing could occur legally only under authority of IPHC sport fishing regulations which allow a daily catch limit per person of two halibut (annual management measures section 24(2), published at 67 FR 10989, March 7, 2003). Alternatively, subsistence halibut may have been taken illegally or taken as commercial harvest. In any case, information about subsistence halibut harvests was likely biased because subsistence fish may have been double counted as subsistence and sport halibut harvest, counted as commercial harvest or not reported at all because it was harvested illegally. Hence, the presumption that subsistence harvests of halibut will be significantly increased under this rule because it allows fishers to harvest up to 20 fish per day instead of two fish per day is not necessarily correct.

The subsistence fishery is expected to be self limiting because subsistence fishers typically harvest no more than they need to satisfy food needs. To harvest more than that simply because they can would be wasteful of the resource, their time and effort. Allowing subsistence fishers to harvest more fish in a day than they would be able to legally under current sport fishing rules will allow subsistence fishers to be more efficient, spending fewer days fishing to satisfy food needs, and will foster compliance with fishery management regulations. Although it is true that legal subsistence fishing power will be enhanced by this rule, NMFS does not assume that this enhancement will automatically lead to significantly larger subsistence harvests. The subsistence harvest of halibut is expected to be roughly one percent of the total take of halibut by all sources of fishing mortality, substantially less than the sport harvest of halibut. Of course, effective monitoring of this harvest, like any authorized harvest of halibut, is important. The monitoring system that NMFS intends to implement will be sufficiently comprehensive to monitor the relative magnitude of this fishery, and will likely produce far more reliable information about the total subsistence harvest of halibut in Alaska than is currently available.

Comment 22: Commercial fishing for halibut will be harmed by the subsistence rules. If only 10 percent of the people eligible to do subsistence fishing for halibut take their daily quota of 20 fish twice a year, then about 15 million pounds of halibut will be taken by subsistence fishers. The 30–hook limit will likely take between one-third and one-half of the IPHC Area 2C commercial catch limit. Please consider reducing the hook limit to eight and reconsider the rules if the subsistence harvest exceeds a given percentage of the commercial catch limit.

Response: The purpose of this action is to authorize a fishery for the customary and traditional use of halibut. Although in certain localized parts of the IPHC regulatory areas, subsistence fishing for halibut may compete with commercial and sport fishing for halibut, this action is not intended to constitute a large-scale allocation of the halibut resource away from either the commercial or sport fisheries to the subsistence fishery. Such an allocation is not likely because subsistence fishers are not likely to harvest all of the halibut permitted under these rules. The subsistence halibut fishery is expected to be limited more by the amount of halibut that can be used in a customary and traditional manner than by the catch and hook limits imposed by this rule.

Of course, the subsistence halibut harvest also will not likely be evenly distributed, and some areas may experience higher subsistence harvest rates than others. These areas are likely to be near the larger communities in IPHC Areas 2C and 3A. In response to these concerns, the Council, in April 2002, adopted recommendations to

reduce the harvest and hook limits in certain parts of these areas. These and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

Comment 23: The commercial fishing fleet has not been adequately informed and represented in forming the proposed subsistence rules.

Response: The Council took up the issue of subsistence halibut initially in December 1996, and at 3 of its 5 meetings in 1997. In June 1997, the Council deferred action out of deference to the State of Alaska which was attempting to resolve subsistence issues generally with State legislation. After State action on subsistence did not occur, the Council revisited the halibut subsistence issue in October 1999, and scheduled further discussions and public comment on the alternatives under consideration throughout 2000. The Council addressed subsistence halibut at 4 of its 5 meetings in 2000, reviewing and revising alternatives for analysis and receiving public testimony at all meetings. In total, the Council discussed subsistence at 9 of its meetings. All of these meetings were advertised and open to the public. Many of the 11 voting Council members represent commercial interests in fisheries. In addition, the Council takes advice from its Halibut Subsistence Committee and Advisory Panel, which include members with commercial interests in fisheries, and comments directly from the public. Hence, members of the commercial fishing fleet, as any other member of the affected public, have had ample opportunity to involve themselves and influence the development of the subsistence policy implemented by this action.

Comment 24: Ninilchik should be listed as a rural community in section 300.65(f)(1). The Federal Subsistence Board has found Ninilchik to be a rural area and eligible for subsistence uses. With a 2002 census of about 772 persons, Ninilchik is much smaller than other communities that are listed as rural and would have minimal impact on the halibut resource.

Response: Ninilchik, Alaska is located on the Kenai Peninsula within the Anchorage-Matsu-Kenai non-rural or non-subsistence area as defined by the Alaska Joint Board of Fisheries and Game. In developing criteria for this and the other non-rural areas, the Council considered criteria established by the Federal Subsistence Board but instead chose to model its criteria on those used by the State for determining non-subsistence areas and rural areas in which a subsistence lifestyle may be practiced. Further, the Council specifically named the communities outside of the non-rural areas that it considered rural and to have a customary and traditional use of halibut. Ninilchik was not named as such a community, however, Ninilchik Village was named as one of the Alaska Native tribal entities with customary and traditional uses of halibut. This means that members of the Ninilchik Village Tribe may conduct subsistence fishing outside of any of the non-subsistence areas, but non-Native residents of Ninilchik may not participate in this fishery.

The Council recognized in recommending this action that some rural communities not explicitly named in its initial list may seek a finding of customary and traditional use of halibut and thereby secure subsistence eligibility for its non-Native residents. The Council specifically stated that such communities may petition the Council for such eligibility after it receives a finding of customary and traditional use of halibut from the appropriate State or Federal bodies. Hence, if the Federal Subsistence Board has made such a finding, then Ninilchik should proceed with petitioning the Council for inclusion as a rural community with a customary and traditional use of halibut. If the Council agrees with the petition and recommends such inclusion, NMFS will review the recommendation and publish a proposed rule to change the list of rural communities contained in this action.

Comment 25: As a life-long subsistence fisher, the commentator favors the proposed subsistence rules as written.

Response: NMFS notes this support.

Comment 26: What is customary trade? Customary means what Native people have done throughout their history. Customary is traditional and traditional means traditional ways of the Alaska Native Indian, and does not include (non-Native) rural communities. Tradition means since the beginning; rural is less than a century. Rural is not customary. Whenever something is done to benefit Alaska Natives, it either gets loaded up with stipulations or gets offered to non-Natives as well. Non-Alaska Natives have no subsistence rights because Alaska is not their ancestral land.

Response: Customary trade is defined in this rule as ''the non-commercial exchange of subsistence halibut for money or anything other than items of significant value.'' The term describes the customary and traditional use of halibut in barter for other foods or items necessary for the sustenance of the fisher, his family and community. For example, subsistence halibut may be traded for moose meat, wild berries, fish roe, or other food items collected by other people who have a subsistence lifestyle. This practice represents a natural tendency toward efficiency in organizing human work. Those persons who are particularly talented at catching fish typically would supply the fish for their family and community while others particularly talented at hunting game, for example, would supply the meat. This sharing is not limited to foods but could extend to other goods and services also. When this subsistence economy combines with a cash economy as it does today, this traditional sharing of natural resources may involve a monetary payment to reimburse the harvester's expenses in return for subsistence food or services. For example, a subsistence fisher may receive a nominal payment for his vessel's fuel cost in return for the fish provided.

An important distinction between this type of subsistence bartering and commercial trading is that subsistence bartering does not necessarily increase the overall wealth of the individuals involved but provides for the long-term sustenance of both the harvester and person(s) receiving fish through barter. Commercial trading, however, assumes that at least one of the participating parties enjoys an increase in wealth or profit as a result of the trade, otherwise the trading would not occur or continue. Hence, commercial trading is motivated by profit seeking and wealth accumulation, while customary trade is motivated by a long-term need for basic survival.

Alaska Natives are recognized as having developed customary trade as an essential part of their subsistence lifestyle probably thousands of years before the first non-Natives started to populate what is now the State of Alaska. Of course, in these early years, all of this area was what would be considered now as rural, and many non-Alaska Natives adopted the subsistence lifestyle also as a means of survival. Hence, the conditions that cause or lead to a subsistence lifestyle are based as much on living in a rural setting with relatively few or limited commercial sources for food as they are based in Alaska Native culture. For this reason, the Council determined that persons who live in rural communities with customary and traditional uses of halibut should be equally eligible to harvest subsistence halibut with persons

who are members of Federally recognized Alaska Native tribes that have customary and traditional uses of halibut. NMFS has agreed with this Council policy. Other persons, Native and non-Native, will not be granted this subsistence fishing privilege.

The conditions and constraints on subsistence halibut fishing imposed by this rule are relatively modest compared to the total population of persons eligible for a subsistence halibut fishing privilege. They are designed to be unintrusive and reasonably balanced with other uses of fishery resources while providing recognition of a fishery and use of halibut that historically extends back in time long before the present.

Comment 27: The limit of $400 per year on customary trade is too limiting. Non-Natives do not live on $400 per year.

Response: The purpose of the monetary limit on customary trade is to allow subsistence fishers to be nominally reimbursed for their expenses in supplying subsistence halibut to their community without that reimbursement being considered a commercial transaction. The Council recommended and NMFS approved the $400 limit on cash exchanges in customary trade of subsistence halibut as a reasonable balance between no cash exchanges being allowed and higher limits that suggest significant economic value to, and possibly commercial enterprise in, subsistence halibut. Neither Alaska Natives nor non-Natives are expected to be able to make a living in an economic sense by harvesting subsistence halibut. Anyone intending to make a living by fishing for halibut may do so by entering the commercial IFQ fishery (or the CDQ fishery in the Bering Sea) for halibut.

Comment 28: The commercial IFQ fishers are not constrained by hook and daily bag limits so why should subsistence fishers have 30–hook and 20–fish per day limits. Commercial halibut fishers are allowed a percentage of sablefish bycatch. Subsistence halibut fishers also should be allowed to retain a percentage of sablefish as this species has been a part of the Native diet and customary trade throughout history.

Response: Commercial IFQ fishers are constrained by fishing gear and harvest restrictions. A basic tenant of the IFQ rules is that an IFQ fisher must not harvest more halibut than is specified on his or her IFQ permit. Although IFQ fishers may not be constrained by a daily harvest limit, they are constrained by the total amount of halibut they may harvest in a year. Likewise, commercial halibut fishers must not retain other species of fish that are taken incidental to halibut unless they have a permit and authority to do so. For sablefish, this would be sablefish IFQ. Similarly, subsistence halibut fishers may retain species caught incidental to halibut to the extent they are authorized to do so by State of Alaska and other Federal agencies that manage the subsistence harvests of other species.

Comment 29: In response to the NMFS request for comment on how best to prevent movement of subsistence halibut into the commercial sector (67 FR 54770), NMFS should consult with affected tribal governments and users. NMFS is commended for engaging in meaningful tribal consultation on development of the proposed rule and this consultation should be continued.

Response: NMFS notes this support and reiterates its intent to continue consultation with Alaska Native tribal representatives on subsistence halibut management issues pursuant to guidance and requirements under Executive Order (E.O.) 13175 and other applicable law.

Comment 30: Mandatory registration is not necessary, particularly in remote areas (i.e., IPHC Areas 3B, 4A, 4B, 4C, 4D, and 4E), either to identify eligible tribal subsistence users or for gathering harvest information. A tribal identification card would suffice to prove eligibility. Cooperative agreements between NMFS and tribes for harvest information is the best way to collect harvest data. If registration is necessary in some areas, the regulations appear to provide an avenue to minimize this burden on tribal subsistence users through cooperative agreements with tribes. NMFS should extend the time for re-registration to well beyond 4 years.

Response: The principal purpose of the registration system is to provide a basis for collecting information on participation and harvest in the subsistence halibut fishery. A secondary purpose is to distinguish between persons who are eligible and persons who are not eligible to harvest subsistence halibut. Although most persons in remote areas likely will be eligible, for data collection purposes, these subsistence fishers should be in the registration system along with those from less remote areas.

NMFS considered the option of relying on tribal identification cards to demonstrate the eligibility of subsistence halibut fishers who are members of Federally recognized Alaska Native tribes with customary and traditional use of halibut. Other non-Native residents of the specified rural communities who also would be eligible to harvest subsistence halibut would not necessarily have tribal identification cards. Therefore, a single SHARC that would be used by all eligible fishers would be more efficient for distinguishing eligible from non-eligible persons. NMFS intends to cooperate with tribal and other entities to distribute information and forms that will facilitate registration. As explained in the preamble to the proposed rule, NMFS will determine the eligibility of each applicant for a SHARC. The reason for limiting the duration of a registration is to keep the list of registered individuals limited to those who actually intend to harvest subsistence halibut and to maintain current contact and address information. Although an Alaska Native tribal member may be eligible to fish for subsistence halibut throughout his or her life, he or she may choose not to participate in the fishery during various periods of his or her life. For example, the very young and the very old may not be personally involved in harvesting subsistence halibut. In that event, a lapsed registration would indicate no participation in the fishery and therefore no need to participate in the subsistence halibut harvest survey. An eligible individual's lapsed registration could be renewed at any time thereby indicating that the individual should be included in the survey. Longer periods of registration validity would produce a larger universe of registered persons who are no longer actual participants in the fishery.

Comment 31: Although a voluntary reporting system and authority to enter into cooperative agreements with affected tribes is good, it is not clear why the harvest survey would require information about the subsistence fisher's identity. Due to a long history of government suppression of tribal subsistence practices, some tribal subsistence fishers may resist complying with surveys that require such personal identification. For example, a community harvester may be reluctant to disclose his full harvest if he expects that doing so will, by comparison with sport harvesters, bring negative attention to his practice of supplying subsistence food for his community. Tribes could provide NMFS and the IPHC with complete and accurate harvest information without identifying the particular tribal members who did the harvesting. NMFS should modify the regulations to allow for, but not require, identification of individual harvesters in the harvest survey.

Response: Personal identification information is needed on the survey form to prevent confusion of harvest

information supplied by persons with the same or similar names. It prevents double counting or not counting some harvest data. NMFS is sensitive to the need for confidentiality of personal identification data and data about the volume and location of subsistence harvests. Existing State and Federal confidentiality laws and regulations effectively prevent revealing harvest data, whether supplied by individual commercial, sport, or subsistence fishers. Published reports of subsistence harvest data will contain only aggregated information which will not indicate the harvests of any particular fisher. Nevertheless, NMFS intends to continue consultation with Alaska Native tribal representatives to resolve any questions of confidentiality.

Comment 32: Figure 1 of the proposed rule mistakenly portrays the Sitka Sound LAMP area as a ''non-subsistence area.'' This is not consistent with the Council's action or the description of the four non-rural areas in the proposed regulatory text.

Response: This inadvertent error in Figure 1 is corrected in this rule.

Comment 33: In the proposed regulatory text at section 300.65(g)(3) (67 FR 54776), the phrase ''in any Commission regulatory area'' could be interpreted to mean that subsistence halibut fishing would be prohibited from that part of Bristol Bay that is not included within an IPHC area.

Response: NMFS agrees that this phrase (used in several places in the proposed rule) unintentionally would have prevented subsistence halibut fishing in the closed area. This error is corrected in this rule (see also response to comment 16).

Comment 34: Although most Native subsistence halibut users support fully the collection of harvest information necessary to the health and conservation of halibut stocks, modification to the proposed rules is necessary to lessen the burden on tribal harvesters and result in better information. Cooperative agreements with the affected tribes that maximize their participation in registering and collecting harvest information is essential to the success of this program.

Response: NMFS has made every effort to minimize the reporting burden of information collected on the harvest survey forms, as is required by the PRA (see also response to comment 1). Further, NMFS agrees that cooperation with the Alaska Native tribes affected by this rule is essential to assure high quality information from the subsistence halibut harvest survey. Tribal entities could, for example, assist with this effort by cooperating on the registration process and providing corroborating information that could verify or contest preliminary survey data. NMFS intends to continue consulting with Alaska Native tribal representatives with a view toward enhancing the quality of subsistence harvest data.

Comment 35: Thirty hooks per skate and 20 halibut per day is a reasonable limit for subsistence halibut harvest. The latest Council action on subsistence, however, would seriously restrict subsistence halibut harvest in the Sitka LAMP area. This action has caused concern among Sitka Natives.

Response: The latest Council action on subsistence was taken in April 2002, which will be addressed in a separate proposed rule and considered by NMFS separately from this rule.

Comment 36: No significant difference in harvest numbers will occur when subsistence halibut harvest is legalized in Sitka Sound. The Sitka Tribe proposes to collect data and assist with administering of the subsistence halibut permit system.

Response: NMFS notes this forecast of subsistence halibut harvest and welcomes the cooperation of the Sitka Tribe.

Comment 37: NMFS has made significant effort to consult with Native tribes in the development of the subsistence halibut proposed rule. Although subsistence halibut fishing will be open to all rural residents, it is important to recognize the unique relationship that tribal governments have with the Federal government. The subsistence rules should include a section on meaningful tribal consultation and reiterate the commitment of NMFS to continue consulting and working cooperatively with Alaska tribes on regulatory and other issues related to the subsistence halibut fishery. Establishing cooperative agreements with the affected tribes for harvest data collection, issuing permits, monitoring and research of subsistence halibut stocks and generally including tribes in the management and decision-making process will strengthen the overall management effort.

Response: NMFS agrees that cooperating with the affected Alaska Native tribes will foster trust between the agency and subsistence fishers and generally assure the success of the subsistence halibut program. In developing its subsistence policy, the Council specifically recommended cooperative agreements with tribal, State and Federal governments for harvest monitoring and general oversight of issues affecting subsistence halibut fishing. NMFS intends to follow the Council's guidance. As already noted, the agency consulted with Alaska Native tribes in the development of the proposed rule. NMFS also has implemented contracts with the Rural Alaska Community Action Program (RurALCAP) for purposes of consulting with Alaska Native representatives and with the Subsistence Division of ADF&G for subsistence harvest survey and estimation. As this program is launched, NMFS likely will need the cooperation of the affected tribal entities to distribute information about registration, reporting harvest information, and general compliance with the rules which may be best achieved through ongoing consultation with the affected tribes.

Comment 38: Although registration of subsistence halibut fishers could be a valuable management tool it should not be mandatory. A tribal identification card issued to each member of a tribe authorized to conduct subsistence fishing should be considered adequate documentation of eligibility. Cooperative agreements with the tribes would allow them to provide harvest data and to identify eligible subsistence fishers who are not members of the tribe.

Response: NMFS discussed this question at length among its divisions that would be involved in implementing the subsistence rules and with other agencies. Ultimately, the agency decided that a mandatory registration system was preferred primarily so that information on participation and harvest could be collected in a uniform and comparable manner. As discussed in the preamble to the proposed rule, the primary objective of the mandatory registration system is to provide a basis for surveying the harvest of subsistence halibut. NMFS has no intention of using the registration system as a means to prevent otherwise eligible persons from fishing for subsistence halibut. A secondary purpose of the registration system is to distinguish between persons who are eligible to fish for subsistence halibut and those who are not eligible to do so.

Comment 39: Requiring a subsistence fisher's identity, date of birth, etc., as part of the harvest survey is not necessary and could be counter productive. Based on tribal experience in conducting subsistence harvest surveys, collecting accurate data is enhanced by not requesting personal information. Alternatively, the affected tribes could provide NMFS and the IPHC with full and accurate harvest information without identifying a tribal member that harvested fish or linking him or her to a particular amount of fish harvested. The research design and

survey instrument for collecting traditional subsistence harvest data should be left up to each individual tribe.

Response: NMFS has made every effort to minimize the amount of information collected on the harvest survey forms, as is required by the PRA (see response to comment 1). Identifying information about the subsistence fisher is required only to the extent necessary to prevent confusing the harvests of persons with the same or similar names. The data collected on subsistence halibut harvests will be aggregated for purposes of reporting to the public. Existing State and Federal confidentiality standards will be strictly complied with to prevent the harvests of individual fishers from becoming generally available. Commercial halibut and sport halibut harvest data are held to the same standards of confidentiality. NMFS is hopeful that further cooperation with affected fishers and explanation of the survey design and data handling techniques will demonstrate that the risk of a confidentiality breach by a cooperating State or Federal agency is low. The relative accuracy and comparability of subsistence halibut harvest estimates will be increased to the extent that the same survey methods are used comprehensively. Relying on a variety of survey instruments and methodologies, such as may happen if each tribe developed its own harvest estimation technique, would prevent comparison of subsistence halibut harvest rates among different areas.

Comment 40: The creation of a new subsistence halibut fishery would create another special user group with unequal rights to harvest resources that belong to all Alaskans. The fishery should be open to all Alaskans, without regards to racial origin or place of residence.

Response: The halibut resource is, in fact, open to all persons in some respect, and this action does not limit existing public access to the resource. For example, anyone with a State sport fishing license, may sport fish for halibut and retain two fish per day. Any U.S. citizen may participate in the commercial halibut IFQ fishery off Alaska if he or she meets the criteria and receives an IFQ allocation. Likewise, the subsistence fishing authority provided by this action may be enjoyed by anyone who is or becomes a resident in one of the rural communities with customary and traditional uses of halibut listed in this rule. The other group of persons eligible to conduct subsistence halibut fishing are members of Federally recognized Alaska Native tribes with customary and traditional uses of halibut. Participation in the subsistence halibut fishery as a member of this group may not be possible to anyone except by chance of birth or adoption, but this is not a new user group of the halibut resource. The ancestors of this group have used this resource, among others, for sustenance for thousands of years before the first non-Alaska Natives appeared in Alaska and began to do likewise. Although this action provides for a special subsistence harvesting privilege for certain individuals and not for others, it does not create a new user group and will likely not significantly affect the harvesting privileges of other users of the resource. Essentially, this action formally recognizes the long term practice of using the halibut resource for subsistence purposes as being as equally valid a use as are the commercial and sport uses.

Comment 41: NMFS is commended for proposing these rules to apply in Alaska. The Alaska National Interest Lands Conservation Act recognizes subsistence, but discriminates against Natives based on where they live and not the lifestyles they lead. The subsistence rules are a step in the right direction.

Response: NMFS notes this support.

Comment 42: The number of hooks allowed to be used by a subsistence fisher should be increased if that person is proxy fishing.

Response: This rule is silent on proxy fishing, a formal mechanism to allow fishing on behalf of another person. The Council purposely avoided issues pertaining to proxy fishing by providing for relatively liberal hook and harvest limits. In developing this policy, the Council understood that a subsistence halibut fisher would likely share his harvest with others and, therefore, proxy fishing was not deemed to be necessary.

Comment 43: The Alaska Department of Fish and Game should not play any part in the enforcement of these rules because ADF&G enforcement has demonstrated minimal sensitivity to people living in a rural setting.

Response: These rules, like other halibut fishery management rules, may be enforced by any authorized officer. The term ''authorized officer'' is defined, with respect to fishing off Alaska, to mean ''...any State, Federal, or Provincial officer authorized to enforce these regulations including but not limited to, the National Marine Fisheries Service,...Alaska Division of Fish and Wildlife Protection,...[and the] United States Coast Guard...'' (67 FR 12885, March 20, 2002).

Changes From the Proposed Rule

NMFS invited public comment on the proposed rule implementing the subsistence halibut program from August 26, 2002, through September 25, 2002 (67 FR 54767, August 26, 2002). The 43 comments received are summarized and responded to above. Several of these comments made technical suggestions or pointed out errors in the proposed rule with which NMFS agrees. Hence, NMFS has changed regulatory text in this action from what was published in the proposed rule. All of these changes are of a technical nature that correct errors in the proposed rule, improve the effectiveness of the rules, or improve their parity with the Council's intent and regulations developed by the IPHC. None of these make substantive changes to the subsistence halibut management program described in the preamble to the proposed rule. These changes are identified and explained as follows.

1. The proposed rule text in several places described the general area in which subsistence halibut fishing would occur in waters in and off Alaska. Although the context in each instance varied, the implication of phrases like ''Commission regulatory area'' or the naming of regulatory areas was that subsistence halibut fishing could occur only in Commission regulatory areas in waters in and off Alaska and nowhere else in waters in and off Alaska. The proposed rule failed to recognize that an area closed to commercial halibut fishing in the Bering Sea is defined by IPHC regulations to be outside of any of the Commission regulatory areas that are in waters in and off Alaska (see annual management measures at sections 6 and 10 (68 FR 10989, March 7, 2003)).

Any implication that subsistence halibut fishing also should not occur in the closed area was wrong and unintentional. The Council never indicated that intent, and the IPHC regulations make clear that the closed area applies only to commercial halibut fishing. This error was pointed out in comments 16 and 33. The error was found in the proposed rule text in: the definitions of ''sport fishing'' and ''subsistence'' at § 300.61, the heading at § 300.65, § 300.65(g)(3), § 300.65(g)(4), § 300.65(g)(4)(iii), and § 300.65(h). In this rule, with one exception, the phrase ''Commission regulatory area'' was removed from these places. The exception is at § 300.65(g)(4)(iii) where the phrase ''or the Bering Sea closed area'' is added to maintain the intended context.

2. The proposed regulatory restructuring at § 300.63 erred by including obsolete text in paragraph (b). The purpose of this restructuring, detailed more completely in the preamble of the proposed rule, is to better distinguish halibut fishery management measures that are applicable to IPHC Area 2A from those that are applicable to waters in and off Alaska. Until now, these management measures, all of which were developed by either the Pacific Fishery Management Council or the North Pacific Fishery Management Council under authority of the Halibut Act and approved by NMFS, have been implemented primarily by regulations at § 300.63. The addition of these subsistence rules would make this section structurally too cumbersome. This action will distinguish Area 2A management measures from those applicable to waters in and off Alaska by moving the ''Alaska'' provisions formerly in § 300.63 to a revised § 300.65 and a new § 300.66 (prohibitions).

This restructuring is intended to have no effect on the Area 2A management measures. To avoid confusion in the amendatory text of each instruction in the proposed rule, the full text of each paragraph in § 300.63 was reiterated in the proposed rule. Unfortunately, some of that text was obsolete by the time the proposed rule was published. If that mistake were repeated in this final rule, it would unintentionally undermine the halibut fishery management program in Area 2A. Hence, to avoid that mistake, this final rule does not attempt to republish existing regulatory text in § 300.63 pertaining to Area 2A because it may be changed again before this final rule becomes effective. Only revised text in the introductory paragraph (which is redesignated as paragraph (a)) is published in this final rule and unrevised text in former paragraph (a) or redesignated paragraph (b) is indicated by 3 stars.

3. Comment 32 indicated that Figure 1 mistakenly depicts Sitka Sound as a non-rural area in which subsistence fishing would be prohibited. Based on the description of the four non-subsistence areas in the preamble to the proposed rule and the proposed rule text, Figure 1 in the proposed rule is clearly wrong. This was caused by a technical error in transferring graphic data files for publication and was not meant to add a new non-subsistence area not otherwise described and explained. This technical mistake is corrected in this action by publishing Figure 1 as originally intended. Figure 1 is not substantially different from the previously existing Figure 1 in § 300.65 and its purpose is to depict the boundaries of the Sitka Sound LAMP. It is republished in this rule as part of the restructuring of regulatory text described in the preamble to the proposed rule in which the text description of the Sitka Sound LAMP is moved from § 300.63(d) to § 300.65(d).

A separate but related change in the proposed rule is made to correct an inadvertent error in the text description of the Sitka Sound LAMP. Due to a drafting oversight in the proposed rule text at § 300.65(d)(1)(i)(C), Cape Edgecumbe was incorrectly described at 57° 59' 54'' N. latitude, 135° 51' 27'' W. longitude. Although this was the coordinate originally published in the LAMP implementing rule, it was later corrected to be 56° 59' 54'' N. latitude, 135° 51' 27'' W. longitude (66 FR 36208, July 11, 2001). Hence, this rule makes a technical change to include the correct coordinate for Cape Edgecumbe.

4. The limitation on using more than 30 hooks on fishing gear to harvest subsistence halibut applies to each authorized subsistence halibut fisher. This limitation was clear in the Council's recommendation and was clear in the preamble to the proposed rule. The regulatory text published in the proposed rule, however, was not clear. This lack of specificity and potential ambiguity in the proposed regulatory text was pointed out in comment 4. Hence, the regulatory text at § 300.65(g)(1)(i) is changed from the proposed rule to clarify that the hook limitation applies to each person eligible to conduct subsistence halibut fishing under this rule.

5. A minor technical change was suggested in comment 5 to require setline gear used for subsistence halibut fishing to be identified as such by including an ''S'' on the buoys marking the gear. This labeling requirement is in addition to the name and address of the fisher. This additional marking requirement is intended to help distinguish subsistence halibut fishing gear from commercial halibut fishing gear, to which a hook limit does not apply.

6. Another technical change in the harvest survey instrument, based on recommendations in comments 1 and 18, would provide a finer level of geographic specificity than the IPHC regulatory area. This specificity is desirable to be able to respond to potential grounds preemption and allocation questions that may arise in the future. Hence, NMFS changed the regulatory text at § 300.65(h)(4) from what was published in the proposed rule to include the local water body where subsistence halibut harvests were made in the harvest survey. A local water body would be, for example, Sitka Sound (in Area 2A), Kachemak Bay (in Area 3A), or Beaver Inlet (in Area 4A).

7. The proposed rule at §§ 300.65(h) and 300.66(e) indicates that a subsistence halibut fisher must possess a valid SHARC before he or she begins subsistence halibut fishing. The term ''possess'' was meant to indicate that a subsistence halibut fisher must have the SHARC physically with him or her while fishing. Comments 12 and 19 note, however, that this meaning is not necessarily clear. Hence, NMFS changed text from the proposed rule at § 300.66(e) to clarify the original intent of being able to document authority to conduct subsistence halibut fishing while fishing for subsistence halibut. This clarification is made by requiring a valid SHARC to be available for inspection by an authorized officer.

Making this clarifying change in this rule is consistent with the rationale for the registration system given in the preamble to the proposed rule. Although the primary purpose for requiring the registration of subsistence halibut fishers is to provide the basis for collecting subsistence halibut harvest data, an important secondary purpose is to be able to distinguish between those persons who are eligible to fish for subsistence halibut and those who are not eligible. Although possession of a registration certificate on a vessel conducting subsistence halibut fishing is not necessary for the first purpose, it is necessary for the second purpose.

8. The proposed rule preamble (67 FR 54770, column 2, last paragraph) described the SHARC as being valid for either 2 or 4 years depending on a person's basis for being eligible for a SHARC as a resident of a specified rural community or member of a specified Alaska Native tribe, respectively. The preamble also described the rational for a multi-year SHARC and reason for having different expiration periods. Due to a drafting oversight, however, the regulatory text of the proposed rule failed to specifically provide for denominating SHARCs with dates of eligibility. Therefore, this action corrects that oversight with language at section 300.65(h)(3) that allows NMFS to specify on the certificate the period of time during which the SHARC will be valid. This new regulatory text also clarifies that persons eligible to harvest subsistence halibut may renew their SHARCs that are expired or will soon (within 3 months) expire by following the specified registration procedures. This change is consistent with the explanation and rationale of the

subsistence halibut registration system given in the preamble to the proposed rule and as contemplated in the response to comments 13 and 30 above.

9. Section 300.65(g)(1) describes the type of gear to be used for subsistence halibut fishing. The proposed rule contained a typographical error using the word ''jigging'' to describe jig gear. Because this section lists gear types and not activities, the word ''jigging'' in the proposed rule is changed to ''jig'' in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

10. Section 300.65(h)(2) describes the registration process for subsistence halibut fishing. The proposed rule stated that a person may submit an application to a cooperative Alaska Native tribal government or other entity designated by NMFS or directly to NMFS. Only NMFS has the authority to register participants in the subsistence fishery. Application may be submitted to a cooperative Alaska Native tribal government or other entity designated by NMFS which may forward the applications to NMFS for registration. The text in § 300.65(h)(2) is corrected in the final rule to indicate that the cooperative Alaska Native tribal government or other entity designated by NMFS will forward the applications to NMFS. This correction will ensure that participants understand that the application must ultimately arrive at NMFS to complete the registration process. This correction does not substantively change the requirements of this section, only clarifies the area of responsibility in the registration process.

11. Section 300.66 is changed from the proposed rule in the final rule by adding paragraph (j) that prohibits the filleting, mutilating, or disfiguring of subsistence halibut. This prohibition is consistent with prohibitions already in place for commercially and sport caught halibut and is necessary to allow the counting of subsistence halibut to determine compliance with the bag limits at 50 CFR 300.65(g)(2). The fish can not be counted if they are filleted, mutilated, or disfigured. Therefore, compliance with the bag limits are enforceable only with this prohibition.

12. Section 300.65(g)(3)(iii) is changed from the proposed rule by substituting the word ''excludes'' for the word ''includes.'' This change makes this paragraph of the regulatory text consistent with Figure 4. This paragraph describes the Anchorage/Matsu/Kenai non-subsistence area in Cook Inlet which is depicted in Figure 4. The description of this non-subsistence area is based on the existing definition in the Alaska Administrative Code at 5 AAC 01.555(b), May 14, 1993. In the State regulation, the Tyonek Subdistrict is excluded from the Anchorage/Matsu/Kenai non-subsistence area as it is correctly depicted in Figure 4. The text of the proposed rule at section 300.65(g)(3)(iii), however, indicated that the Tyonek Subdistrict would be included in the Anchorage/Matsu/Kenai non-subsistence area, although this text was not explicitly labeled as the Tyonek Subdistrict. Changing ''included'' in the proposed rule to ''excluded'' in this final rule corrects the inconsistence between the regulatory text and Figure 4. The regulatory text that specifies the Tyonek Subdistrict is further labeled as such by adding ''Tyonek Subdistrict'' in parentheses to further clarify the regulatory text with Figure 4.

This change from the proposed rule will have no practical effect because halibut are not typically found within the Tyonek Subdistrict due to the high silt content of the water in that part of Cook Inlet. Hence, Tyonek is not a community with customary and traditional uses of halibut and is not listed in section 300.65(f)(1).

13. The proposed rule at 300.65(f)(2) identified persons eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe as identified in the table. The proposed rule contained a typographical error in Halibut Regulatory Area 4E, identifying ''Nuna Iqua'' under the Sheldon Point Tribal Headquarters to describe ''Nunam Iqua''. Similarly, the Organized Tribal Entity for that Headquarters was identified as ''Native Village of Sheldon's Point'', instead of ''Native Village of Sheldon Point''. These errors are corrected in this final rule. This correction does not substantively change the requirements of this paragraph, only corrects a typographical error.

14. Section 600.725 describes the authorized gear types to be used for the Pacific halibut fishery. The proposed rule contained a typographical error using the word ''jigging'' to describe jig gear under paragraph C. Because this section lists authorized gear types, and not activities, the word ''jigging'' in the proposed rule is changed to ''jig'' in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

Classification

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0460. These requirements and their associated burden estimates per response are: 10 minutes for Subsistence halibut registration; 30 minutes for Subsistence halibut harvest report/survey; and 15 minutes for Subsistence halibut gear marking. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

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

In developing this rule, NMFS consulted with Alaska Native tribes, as defined in this rule, pursuant to E.O. 13175. This consultation was conducted through direct mailings to the affected tribes, meetings with the Alaska Native Subsistence Halibut Working Group organized by the Rural Alaska Community Action Program to represent all Native subsistence halibut users, and public meetings of the Council and its advisory bodies including the Halibut Subsistence Committee.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No regulatory flexibility analysis (RFA) was prepared. No comments or new information were received during the comment period that caused us to reevaluate the basis for the original determination, or to prepare a RFA.

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 2, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS, SUBPART E PACIFIC HALIBUT FISHERIES

■ 1. The authority citation for 50 CFR part 300, Subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61 new definitions for ''Alaska Native tribe,'' ''Commission,'' ''Commission regulatory area,'' ''Customary trade,'' ''Rural,'' ''Rural resident,'' ''Subsistence,'' and ''Subsistence halibut,'' are added in alphabetical order, and existing definitions for ''Commercial fishing,'' ''IFQ halibut,'' and ''Sport fishing'' are revised to read as follows:

§ 300.61 Definitions.

* * * * *

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(f)(2) of this part.

* * * * *

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

* * * * *

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary and traditional use of halibut, and that is listed in § 300.65(f)(1).

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a person domiciled in a rural community listed in the table in § 300.65(f)(1) of this part and who has maintained a domicile in a rural community listed in the table in § 300.65(f)(1) for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Sport fishing means:

(1) In regulatory area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(2) In waters in and off Alaska, all fishing other than commercial fishing and subsistence fishing.

* * * * *

Subsistence means, with respect to waters in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

* * * * *

■ 3. In § 300.63, the section heading is revised; paragraphs (b), (c), (d), and (e) are removed; paragraph (a) introductory text is revised to read as follows; and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5):

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

* * * * *

■ 4. Section 300.65 is redesignated as § 300.66 and revised and a new § 300.65 is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual TAC among area 4 subareas and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) A person authorized to conduct subsistence fishing under paragraph (f) of this section may retain subsistence halibut that are taken with setline gear in Commission regulatory areas 4D or 4E and that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62, provided that:

(1) The total annual halibut harvest of that person is landed in regulatory areas 4D or 4E; and

(2) No person may sell such halibut outside the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

(d) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (See Figure 1 to subpart E):

(i) With respect to paragraph (d)(2) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) By a line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59′54″ N. lat., 135°51′27″ W. long. to Vasilief Rock at 56°48′56″ N. lat., 135°32′30″ W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(ii) With respect to paragraphs (d)(3) and (d)(4) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to

Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) A line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59′23″ N. lat., 135°49′34″ W. long., to Hanus Point at 56°51′55″ N. lat., 135°30′30″ W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61(b), for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61(b), for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61(b), for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Sitka Pinnacles Marine Reserve. (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5′N lat., 135°54.0′W long;
56°57.0′N lat., 135°54.0′W long;
56°57.0′N lat., 135°57.0′W long;
56°55.5′N lat., 135°57.0′W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(f) *Subsistence fishing in and off Alaska.* No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (f)(1) or (f)(2) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhiok	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality

HALIBUT REGULATORY AREA 3A—Continued

Rural Community	Organized Entity
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Municipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality

HALIBUT REGULATORY AREA 4D—Continued

Rural Community	Organized Entity
Diomede (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakiak	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua).	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place

HALIBUT REGULATORY AREA 4E—Continued

Rural Community	Organized Entity
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Place with Tribal Headquarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council
	Central Council Tlingit and Haida Indian Tribes
	Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Headquarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega

HALIBUT REGULATORY AREA 3A—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe
	Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island)
	Native Village of Afognak
	Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanof Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove
	Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village
	Native Village of Unga
	Qagan Toyagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Headquarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Headquarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Headquarters	Organized Tribal Entity
.	
St. George	Pribilof Islands Aleut Communities of St. Paul Island and St. George Island
St. Paul	

HALIBUT REGULATORY AREA 4D

Place with Tribal Headquarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomede (Inalik)	Native Village of Diomede (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Headquarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmuit Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham
	Native Village of Ekuk
	Native Village of Kanakanak
Eek	Native Village of Eek
Egegik	Egegik Village
	Village of Kanatak

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village
	Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay
	Native Village of Paimiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak
Kotlik	Native Village of Hamilton
	Village of Bill Moore's Slough
	Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village
Napakiak	Native Village of Napakiak
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute
	Umkumiute Native Village
Nome	King Island Native Community
	Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktoolik	Native Village of Shaktoolik
Sheldon Point (Nuna Iqua).	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Stebbins	Stebbins Community Association
Teller	Native Village of Mary's Igloo
	Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Mountain

(g) *Limitations on subsistence fishing.* Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (f) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (h) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.

(i) Subsistence fishing gear must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel from which gear is being set or retrieved.

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street, city, and state), followed by the letter ''S'' to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section,

except that no daily retention limit applies in Areas 4C, 4D, and 4E.

(3) Subsistence fishing may be conducted in any waters in and off Alaska except for the following four non-rural areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55° 29.90' N. lat., 131° 58.25' W. long. to Point Higgins at 55° 27.42' N. lat., 131° 50.00' W. long. and a point at 55° 11.78' N. lat., 131° 05.13' W. long., located on Point Sykes to a point at 55° 12.22' N. lat., 131° 05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55° 11.54' N. lat., 131° 11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132° 07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55° 02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57° 50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58° 43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58° 03.42' N. lat.), and east of a line from Point Couverden at 58° 11.38' N. lat., 135° 03.40' W. long., to Point Augusta at 58° 02.38' N. lat., 134° 57.11' W. long.;

(iii) *Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission regulatory area 3A* (see Figure 4 to subpart E) is defined as all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51.10' N. lat.), and a line extending south from Cape Fairfield (148° 50.25' W. long.) except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay (151° 32.00' W. long.) north the western most point of Hesketh Island (59° 30.04' N. lat., 151° 31.09' W. long.) including Jakolof Bay and south of a line west from Hesketh Island (59° 30.04' N. lat. extending to the boundary of the territorial sea); the waters south of Point Bede which are west of the eastern most point of Rocky Bay (from the mainland along 151° 18.41' W. long. to the intersection with the territorial sea); but excludes those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61° 05.00' N. lat., 151° 01.00' W. long.) south to the easternmost tip of Granite Point (61° 01.00' N. lat., 151° 23.00' W. long.) (Tyonek subdistrict, as defined in Alaska Administrative Code, 5 AAC 01.555(b), May 14, 1993); and

(iv) *Valdez non-subsistence marine waters area Commission regulatory area 3A* (see Figure 5 to subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61° 02.24' N. lat., and east of 146° 43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-rural in paragraph (g)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph, ''area of tribal membership'' means rural areas of the Commission regulatory area or the Bering Sea closed area in which the Alaska Native tribal headquarters is located.

(h) *Subsistence registration.* A person must register as a subsistence halibut fisher and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who registers according to paragraph (h)(2) of this section and who is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(2) *Registration.* To register as a subsistence halibut fisher, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, PO Box 21668, Juneau, AK 99802–1668. The following information is required to be submitted with the application:

(i) For a Rural Resident Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence (the rural community or residence from 50 CFR 300.65(f)(1) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a ''rural resident'' as that term is defined at § 300.61, and signature and date of signature.

(ii) For an Alaska Native Tribal Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), Alaska Native tribe (the name of the Alaska Native Tribe from 50 CFR 300.65(f)(2) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a member of an ''Alaska Native tribe'' as that term is defined at § 300.61, and signature and date of signature.

(3) *Expiration of registration.* Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (f) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (h)(2) of this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(2) of this section.

(4) The Administrator, Alaska Region, NMFS, or an authorized representative, may conduct periodic surveys of persons who hold valid subsistence

halibut registration certificates to estimate the annual harvest of subsistence halibut and related catch and effort information. For purposes of this paragraph, an authorized representative of NMFS may include employees of, or contract workers for, the State of Alaska or a Federal agency or an Alaska Native tribal government representative as may be prescribed by cooperative agreement with NMFS. Responding to a subsistence halibut harvest survey will be voluntary and may include providing information on:

(i) The subsistence fisher's identity including his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest, including whether the participant fished for subsistence halibut during the year and, if so, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks usually used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of ling cod and rockfish caught while subsistence fishing for halibut; and

(iii) Any sport halibut harvest, including whether the participant sport fished for halibut during the year and the number and weight (in pounds) of halibut harvested while sport fishing.

§ 300.66 Prohibitions.

■ In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(d).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(e).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), has in his or her possession a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(h), and makes this certificate available for inspection by an authorized officer on request.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(g)(1) and retain more halibut than specified at 50 CFR 300.65(g)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-rural area specified at 50 CFR 300.65(g)(3).

(h) Retain, on board the harvesting vessel, halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons who land their total annual harvest of halibut in Commission regulatory area 4D or 4E may retain, with harvests of CDQ halibut, halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

(i) Retain subsistence halibut that were harvested using a charter vessel.

(j) Retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under 50 CFR 300.65(f), and who holds a subsistence halibut registration certificate in the person's name under 50 CFR 300.65(h) may engage in the customary trade of subsistence halibut through monetary exchange of no more than $400 per year.

(k) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

■ 5. Figure 1 to subpart E is revised; Figure 2 through 5 to subpart E are added to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is amended to read as follows:

Authority: 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

§ 600.725 General Prohibitions.

* * * * *

(v) * * *

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Fishery	Allowable gear types
1. Alaska Scallop Fishery (FMP).	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery.	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)..	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery.	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ).	A. Hook and line.
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.
8. Alaska High Seas Salmon Hook and Line Fishery:	
(FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP)..	Purse seine.

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL—Continued

Fishery	Allowable gear types
11. Octopus/Squid Longline Fishery (Non-FMP)..	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP).	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP).	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

* * * * *

PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

■ 2. In § 679.2, the definitions for ''commercial fishing'' and ''IFQ halibut'' are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

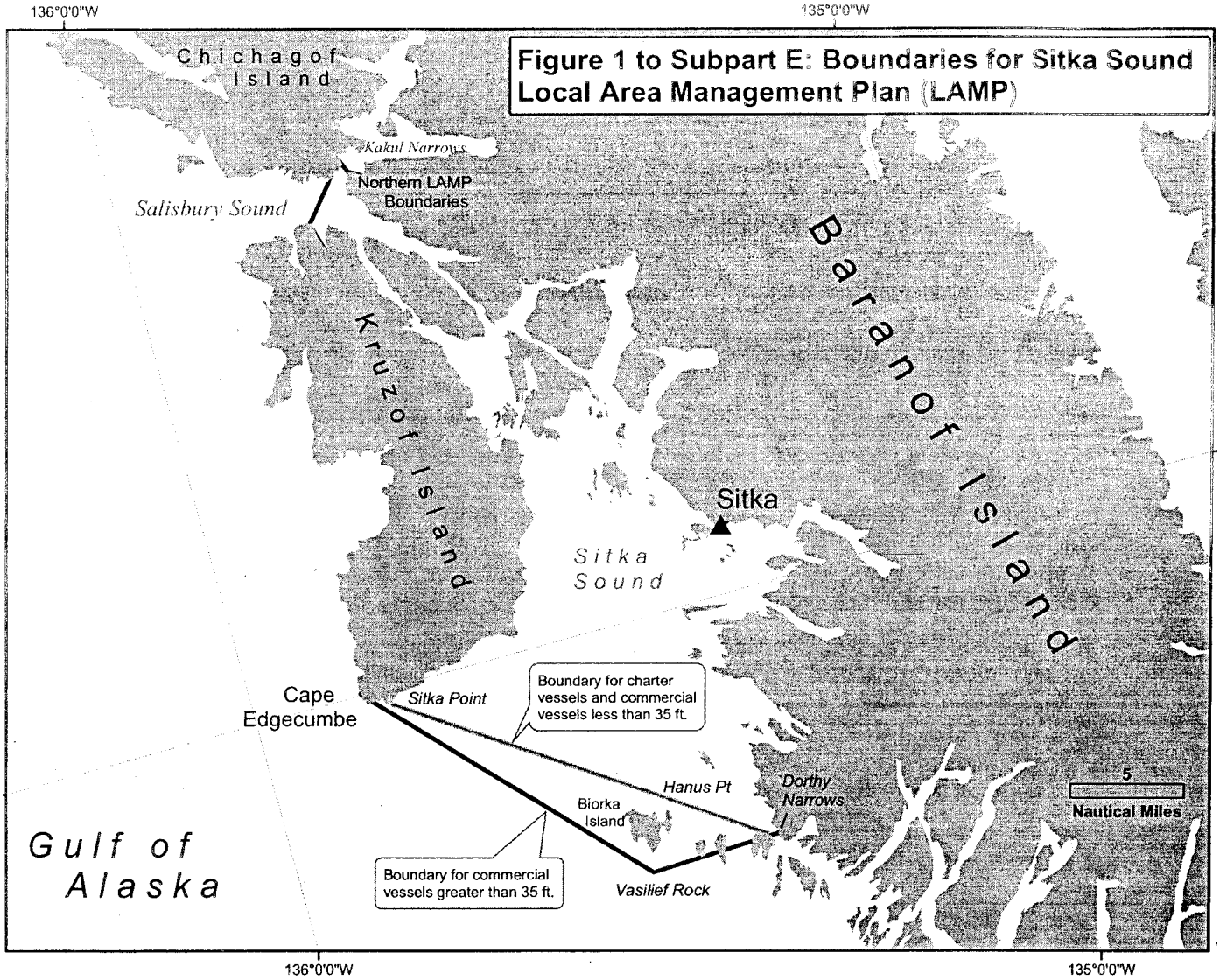
(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

BILLING CODE 3510–22–S



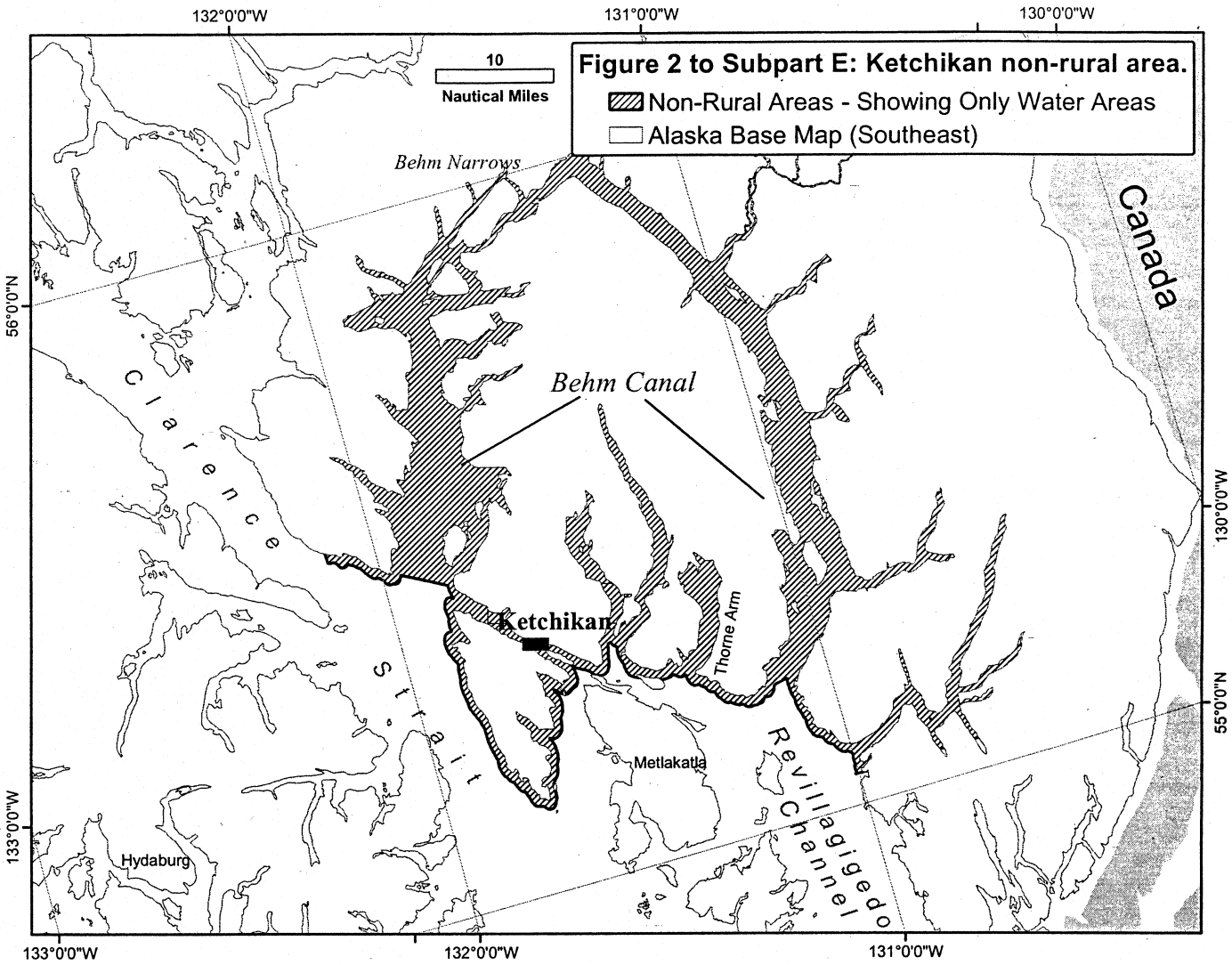


Figure 2 to Subpart E: Ketchikan non-rural area.
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map (Southeast)
10
Nautical Miles
132°0'0"W
131°0'0"W
130°0'0"W
56°0'0"N
55°0'0"N
133°0'0"W
Behm Narrows
Behm Canal
Canada
Clarence Strait
Ketchikan
Thorne Arm
Metlakatla
Revillagigedo Channel
Hydaburg

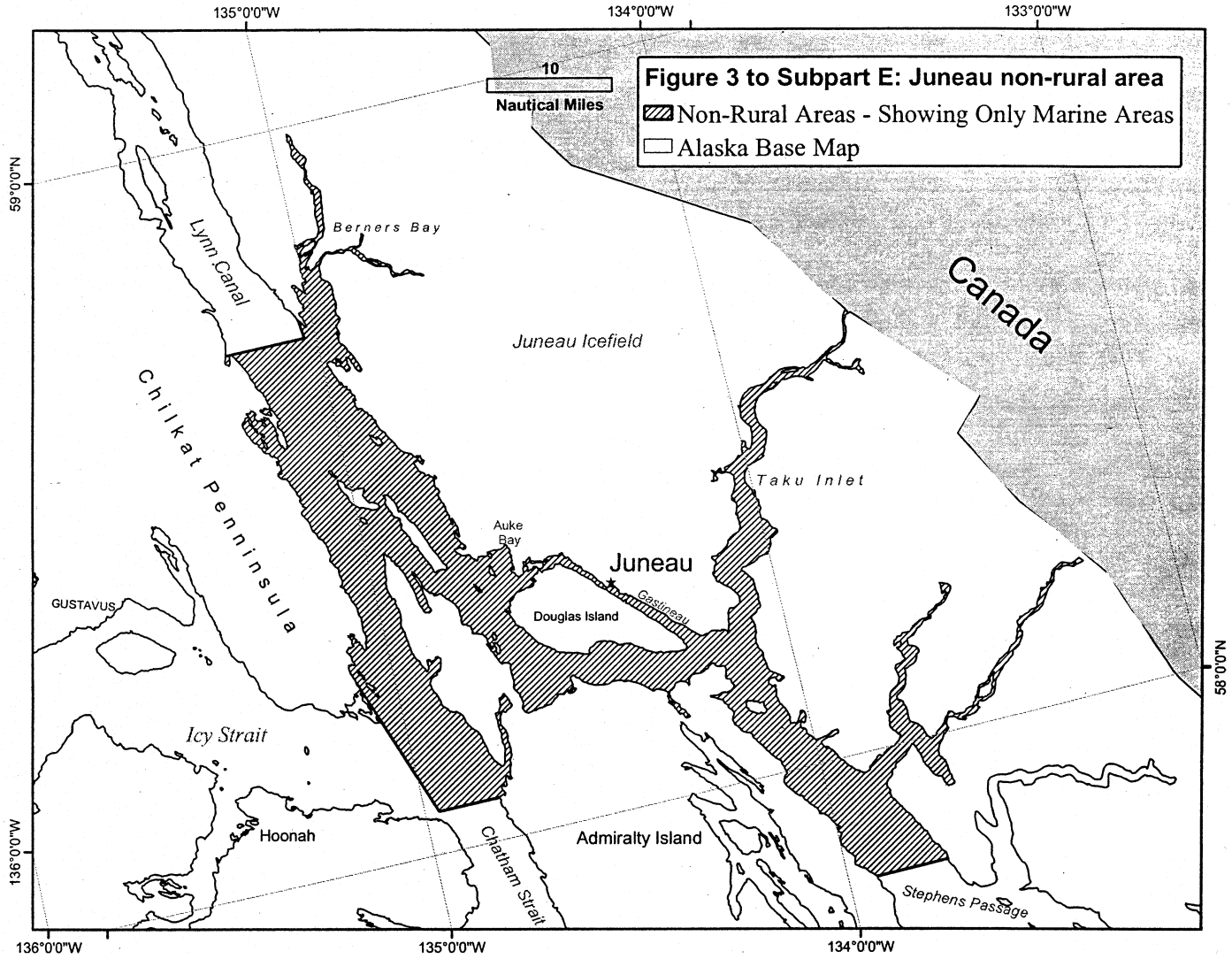
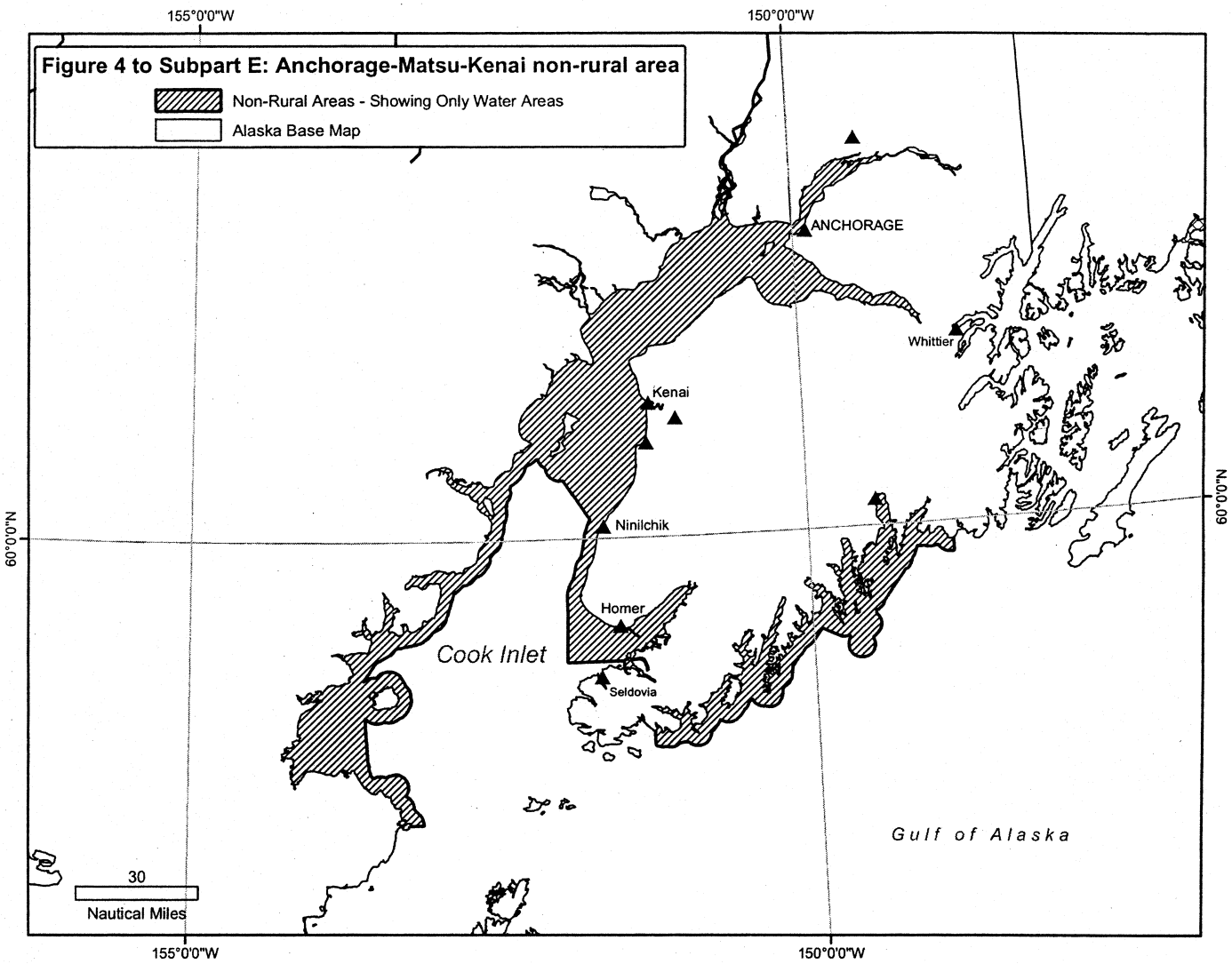
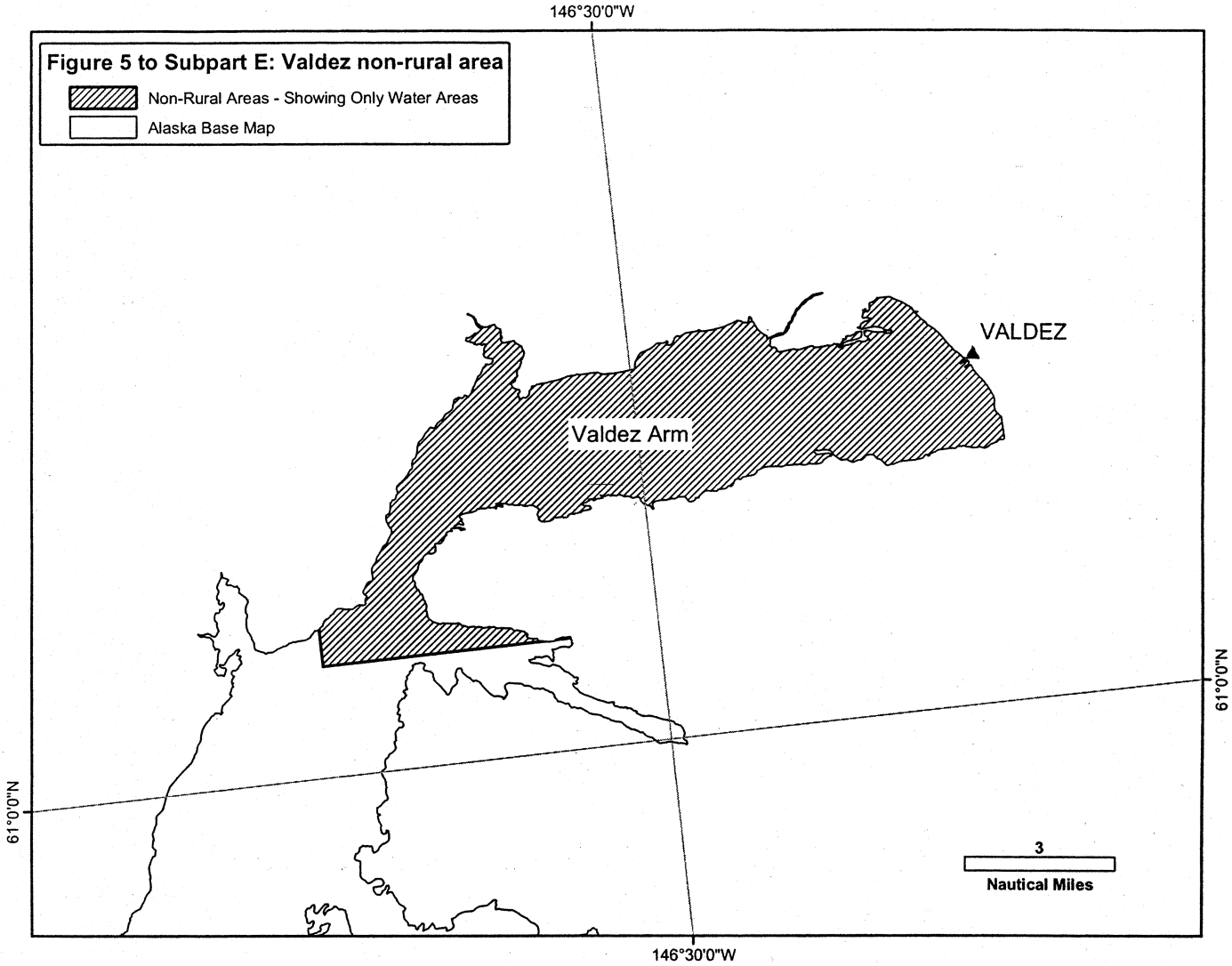


Figure 3 to Subpart E: Juneau non-rural area
Non-Rural Areas - Showing Only Marine Areas
Alaska Base Map
10
Nautical Miles
135°0'0"W
134°0'0"W
133°0'0"W
59°0'0"N
58°0'0"N
136°0'0"W
Canada
Berners Bay
Lynn Canal
Juneau Icefield
Chilkat Penninsula
Taku Inlet
Auke Bay
Juneau
Gastineau
Douglas Island
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage


155°0'0"W
150°0'0"W
Figure 4 to Subpart E: Anchorage-Matsu-Kenai non-rural area
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map
ANCHORAGE
Whittier
Kenai
Ninilchik
Homer
Seldovia
Cook Inlet
Gulf of Alaska
60°0'0"N
30
Nautical Miles



[FR Doc. 03–8822 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 112502C]

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on March 7, 2003, for the Pacific Coast groundfish fishery.

DATES: Effective April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003), and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003, was published in the **Federal Register** on March 7, 2003 (68 FR 11182).

Management measures for the Pacific Coast groundfish fishery, effective March 1 - December 31, 2003 (68 FR 11182, March 7, 2003), contained remnant sablefish size limit language and typographical and transposing errors in the boundary coordinates for the Rockfish Conservation Areas (RCA) that require correction. Coordinates for the following lines are corrected in this document: the 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October; the 75–fm (137–m) depth contour used north of 40°10' N. lat. as an eastern boundary for the trawl RCA in the months of July and August; and the 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA. In addition, this correction removes language referring to size limits and size limit conversions for sablefish. The 2003 management measures do not include a size limit for sablefish.

Therefore, references to sablefish size limits in paragraph titles and the conversion factor for headed versus whole sablefish are not necessary and are confusing to the reader. This correction removes those references.

Corrections

In the rule FR Doc. 035166, in the issue of Friday, March 7, 2003 (68 FR 11182) make the following corrections:

1. On page 11202, in column 2, section IV. under A. General Definitions and Provisions, paragraph (6)(d) is corrected to read as follows:

* * * * *

(6) * * *

(d) *Sablefish weight limit conversions*. The following conversion applies to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish, the conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the State conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

* * * * *

2. On page 11207, in column 1, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(ii) is corrected to read as follows:

* * * * *

(18) 48°05.91′ N. lat., 125°08.30′ W. long.;

(19) 48°07.00′ N. lat., 125°09.80′ W. long.;

(20) 48°06.93′ N. lat., 125°11.48′ W. long.;

(21) 48°04.98′ N. lat., 125°10.02′ W. long.;

* * * * *

3. On page 11208, in column 2, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(iii) is corrected to read as follows:

* * * * *

(64) 47°08.50′ N. lat., 124°57.74′ W. long.;

(65) 47°01.92′ N. lat., 124°54.95′ W. long.;

* * * * *

4. On page 11212, in column 3, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(vii) is corrected to read as follows:

* * * * *

(21) 37°07.58′ N. lat., 122°37.64′ W. long.;

* * * * *

(23) 36°48.20′ N. lat., 122°03.32′ W. long.;

* * * * *

5. On page 11222, in column 1, section IV. under B. Limited Entry Fishery, paragraphs (2)(a) and (b) are corrected to read as follows:

* * * * *

(2) * * *

(a) Trawl trip limits. * * *

(b) Nontrawl (fixed gear) trip limits. * * *

* * * * *

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

Dated: April 4, 2003.

Rebecca Lent,

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

[FR Doc. 03–8821 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 72
Tuesday, April 15, 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. 2002–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 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 BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins, and corrective action if necessary. This action is necessary to prevent failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–62–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. 2002–NM–62–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175, 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 2002–NM–62–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. 2002–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that mandatory BAE Systems (Operations) Limited Service Bulletin J41–32–017 (Modification JM41253) addressed in British airworthiness directive 002–02–94, introduced new, crashworthy drive trunnion pins for the main landing gear (MLG) doors. Some pre-modification pins were modified to the post-modification standard and installed on MLG units, which were installed on airplanes in production. However, at overhaul, some MLGs were found to have pins identified with pre-modification part numbers; those pins may not have been modified. This condition, if not corrected, could result in failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–080, dated January 24, 2002, which describes procedures for inspecting the drive trunnion pins for the MLG doors to determine if the part number (P/N) of the pins is correct. The service bulletin also describes procedures for replacing any pin having the incorrect or no P/N with a new, improved pin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 007–01–2002 in

order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

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 service bulletin described previously.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,840, or $120 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–62–AD.

Applicability: All Model Jetstream 4101 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 (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 main landing gear (MLG) and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

Inspection, and Replacement if Necessary

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the drive trunnion pins for the MLG doors to determine the part number (P/N) of the pins, per ''Part 1—Inspection'' of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002.

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

(1) If P/N AIR135154 is found on both pins: No further action is required by this paragraph.

(2) If any pin having P/N AIR134402 is found, or if any pin having no P/N is found: Within 90 days after accomplishing the inspection, replace the pin having P/N AIR134402 or the pin having no P/N, with a new, improved pin, per ''Part 2—Rectification'' of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in British airworthiness directive 007–01–2002.

Issued in Renton, Washington, on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9137 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–376–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines

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), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, that would have superseded an existing AD that currently requires modification of the nacelle strut and wing structure. The proposed AD would have added a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and a one-time inspection of certain fastener holes in the lower spar fitting of the nacelle strut and wing structure for cracking, and corrective actions, if necessary. For certain airplanes, the proposed AD would have required installation of new fasteners. This new action revises the proposed rule by reducing a certain compliance time and adding new inspections. The actions specified by this new proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–376–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. 2000–NM–376–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

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 2000–NM–376–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. 2000–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 4, 2002 (67 FR 547). That NPRM proposed to supersede AD 99–24–07, amendment 39–11431 (64 FR 66370, November 26, 1999), which is applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. That NPRM would have continued to require modification of the nacelle strut and wing structure. That NPRM would also have added a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and a one-time inspection of certain fastener holes in the lower spar fitting of the nacelle strut and wing structure for cracking, and corrective actions, if necessary. For certain airplanes, that NPRM would have required installation of new fasteners. Fatigue cracking in primary strut structure could result in reduced structural integrity of the strut.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, including Evaluation Form. The procedures in this service bulletin are similar to those in Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999, which was referenced as the appropriate source of service information for the actions required by the original NPRM. However, Revision 2 reduces the compliance time for the detailed inspection of the middle gusset for airplanes that have not yet accumulated 50,000 total flight cycles. The new compliance time for the inspection is before the accumulation of 50,000 total

flight cycles or within 15,000 flight cycles after doing the modification required by AD 99–24–07, whichever is earlier.

Comments

Due consideration has been given to the comments received in response to the NPRM. One commenter has no technical objection to the NPRM, but does not agree that the proposed inspections are necessary to ensure the continued airworthiness of the engine strut. Another commenter does not own or operate the affected airplanes.

Request To Change Paragraph (b)

One commenter, the manufacturer, states that there are airplanes in service that are many years away from the compliance threshold for the inspections specified in paragraph (b) of the NPRM. The commenter adds that those airplanes will not receive timely inspections of the lower spar fitting/aft bulkhead fasteners within the compliance time of 15,000 total flight cycles or 6 months after the effective date of the AD, whichever is later, as specified in paragraph (b). The commenter asks that paragraph (b) be changed to reduce the compliance time for those airplanes in order to ensure that the inspections are done in a timely manner.

We agree with the commenter. The manufacturer has provided data which show that the compliance time specified in Revision 1 of the service bulletin is not adequate to preclude an unsafe condition of loose or missing fasteners in the aft bulkhead of the lower spar fitting before the airplane reaches 50,000 total flight cycles. Also, we have approved Revision 2 of the referenced service bulletin, as stated above, in which the manufacturer recommends reducing the compliance time for airplanes that have not yet accumulated 50,000 total flight cycles. We have added a detailed inspection for loose or missing fasteners, and reduced the compliance time for the inspection specified in Revision 2 of the service bulletin (before the accumulation of 50,000 total flight cycles or within 15,000 flight cycles after doing the modification, whichever is first) to specify the compliance time as ''before the accumulation of 15,000 total flight cycles or within 6 months after the effective date of the AD, whichever is first.''

Request To Delete the Word ''Midchord''

One commenter asks that all references to the word ''midchord'' be deleted from the NPRM. The commenter notes that the midchord is not part of the inspection area specified in the referenced service bulletin.

We agree with the commenter and have removed all references to the word ''midchord'' from the supplemental NRPM.

Request To Clarify Service Information

One commenter states that Revision 1 of the referenced service bulletin was added to paragraph (a), ''Restatement of Requirements of AD 99–24–07,'' of the original NPRM as an additional source of service information for doing the modification required by that paragraph. The commenter notes that Revision 1 was not specified in the original requirements of AD 99–24–07. However, the commenter does not ask for any change to the NPRM.

We agree that Revision 1 of the service bulletin was not in the original requirements of AD 99–24–07. The paragraph titled ''Actions Since Issuance of Previous Rule,'' in the preamble of the NPRM, provides an explanation of the reason Revision 1 was added: It describes new procedures for an examination of the middle gusset of the inboard side load fitting to determine if the angle between the middle gusset and the outboard face of the lug is out of alignment. If the angle is out of alignment, the corrective action involves machining the middle gusset to the specified angle. For operators that already did the modification, the original issue of the service bulletin is carried over from AD 99–24–07 into paragraph (a) of the supplemental NPRM.

Request To Change Paragraph (b)(2)(ii)

One commenter states that the actions proposed by paragraph (b)(2)(ii) of the NPRM are to be accomplished even if a repair has been installed, due to cracking found per the inspection proposed by paragraph (b)(2) of the NPRM. The commenter notes that this may lead operators to alter repairs previously approved by the Manager of the Seattle Aircraft Certification Office (ACO), per paragraph (b)(2)(i) of the NPRM. The commenter adds that this would require operators to obtain approvals for alternative methods of compliance per paragraph (c)(1) of the NPRM. The commenter states that this may cause redundant work and would consume valuable resources at both the airline and the FAA. The commenter asks that paragraph (b)(2)(ii) of the NPRM be separated into two paragraphs, one for repaired holes and one for holes with no cracking.

We do not agree with the commenter. If a repair was done per a previous approval by the Manager of the Seattle ACO, paragraph (b)(2)(ii) of this AD (now added to paragraph (e) of the supplemental NPRM) must still be done. The actions specified in Revision 2 of the service bulletin increase the diameter of the fastener holes specified in Revision 1 of the service bulletin, therefore, we do not agree to further change paragraph (e) of this supplemental NPRM.

Explanation of Changes Made to NPRM

We have changed the service bulletin citation throughout this supplemental NPRM to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

We have changed all references to ''detailed visual inspection'' in the NPRM to ''detailed inspection'' in this supplemental NPRM.

In addition, although Revision 2 of the service bulletin specifies an inspection of only 14 aft bulkhead fasteners, paragraph (b) of this supplemental NPRM requires inspection of all 20 aft bulkhead fasteners. Further, the service bulletin specifies an inspection of only 2 fasteners of the lower spar fitting located in Panel 7 at Location 37, but this supplemental NPRM requires inspection of all 8 fasteners, as clarified in Notes 2 and 4.

Revision 2 also specifies that operators can use tools of their own design as alternatives to Boeing-supplied tools when doing the actions specified in the service bulletin. Paragraph (a) of this supplemental NPRM prohibits the use of such tools, except those specified in Figures 3 and 5 of the Accomplishment Instructions of Revision 2 of the service bulletin.

Conclusion

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

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD.

The modification that is currently required by AD 99–24–07 takes approximately 1,049 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. This work hour figure includes the time it

will take to remove and reinstall the struts from the airplane as well as the time required to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $11,077,440, or $62,940 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, ''Strut Improvement Bulletins,'' on page 6 of Boeing Service Bulletin 757–54–0035, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in the fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in the fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin.

It would take approximately 1 work hour per airplane to accomplish the new detailed inspection of the middle gusset, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD is estimated to be $10,560, or $60 per airplane.

It would take approximately 8 work hours per airplane to accomplish the new fastener removal and eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the removal and inspection proposed by this AD is estimated to be $84,480, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The 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 removing amendment 39–11431 (64 FR 66370, November 26, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–376–AD. Supersedes AD 99–24–07, Amendment 39–11431.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, line numbers 1 through 735 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 99–24–07

Modification

(a) Modify the nacelle strut and wing structure according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997; or Revision 1, dated April 15, 1999; at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. All of the terminating actions described in the service bulletins and listed in paragraph I.C., Table I, ''Strut Improvement Bulletins,'' on page 6 of Boeing Service Bulletin 757–54–0035, and on page 7 of Revision 1 of the service bulletin, as applicable, must be accomplished according to those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph. After the effective date of this AD, use only Revision 1 of the service bulletin.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after January 3, 2000 (the effective date of AD 99–24–07, amendment 39–11431).

New Requirements of This AD

Inspections/Corrective Actions

(b) For airplanes on which the modification required by paragraph (a) of this AD has not been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Before the accumulation of 15,000 total flight cycles, or within 6 months after the effective date of this AD, whichever is later, do a detailed inspection of the 20 aft bulkhead fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. Repeat the inspection after that at least every 6 months.

Note 2: The 20 aft bulkhead fasteners are located in Panel 7 at Locations 36, 37, and 41. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, illustrates the location of the fasteners.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by

the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(c) For airplanes on which the modification required by paragraph (a) of this AD has been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Within 15,000 flight cycles after doing the modification required by paragraph (a) of this AD, or within 3 years after the effective date of this AD, whichever is later; do a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment, according to Part II of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. If the gusset is not aligned properly, before further flight, machine the gusset to the specified angle according to the service bulletin.

(d) Before further flight after doing paragraph (c) of this AD, do the actions required by paragraphs (d)(1) and (d)(2) of this AD.

(1) Remove the aft bulkhead fasteners of the lower spar fitting and do a one-time eddy current inspection of those fastener holes for cracking, according to Part V of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

(2) Do a detailed inspection of the 8 fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle ACO. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

Note 4: The 8 fasteners are located in Panel 7 at Location 37. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, illustrates the location of the fasteners.

(e) If any cracking is found during any inspection required by this AD: Before further flight, repair according to a method approved by the Manager, Seattle ACO; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) If no cracking is found during any inspection required by this AD, or after repair of cracking as required by paragraph (e) of this AD, before further flight, increase the diameter of the fastener holes and install new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form.

(g) Except as identified in Figures 3 and 5 of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, the actions must be done using Boeing-supplied tools.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–24–07, amendment 39–11431, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9138 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–1407; Airspace Docket No. 03–ASO–3]

Proposed Establishment of Class E2 Airspace, Proposed Amendment of Class E5 Airspace; Waycross, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace and amend Class E5 airspace at Waycross, GA. The Ware County Airport Authority has requested Class E2 surface area airspace at Waycross-Ware County Airport to provide airport operations within controlled airspace. Jacksonville Air Route Traffic Control Center (ARTCC) would provide air traffic services at the airport and a federally commissioned automated weather observing system is in operation. In order to conduct these operations, Class E2 surface area must be established. This action would establish Class E2 surface area airspace within a 4.1-radius of the airport.

As a result of an evaluation, it has been determined a modification should be made to the Waycross, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to Waycross-Ware County Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP. Additionally, the 7-mile radius of the Waycross-Ware County Airport would be reduced to a 6.6-mile radius.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Departmental of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14707/ Airspace Docket No. 03–ASO–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both

docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14707/Airspace Docket No. 03–ASO–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation regulations (14 CFR Part 71) to establish Class E2 airspace and amend Class E5 airspace at Waycross, GA. Class E airspace designations for airspace areas designated as surface areas and airspace areas extending uupward from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(d); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO GA E2 Waycross [NEW]

Waycross—Ware County Airport, GA
(Lat. 31°14′58″ long. 82°23′43″.)
Waycross VORTAC
(Lat. 31°16′10″ long. 82°33′23″.)

Within a 4.1-mile radius of the Waycross—Ware County Airport, within 1.2 miles each side of the 099° radial from the Waycross VORTAC, extending from the 4.1-mile radius to 4.7 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO GA E5 Waycross [Revised]

Waycross—Ware County Airport, GA
(Lat. 31°14′58″ long. 82°23′44″.)
WIKET NDB
(Lat. 31°19′28″ long. 82°23′58″.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Waycross—Ware County Airport, and within 4 miles west and 8 miles east of the 003° bearing from the WIKET NDB extending from the 6.6-mile radius to 16 miles north of the WIKET NDB; excluding that airspace within the Alma, GA, Class E airspace area.

* * * * *

Issued in College Park, Georgia on March 31, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–9081 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Delivery Confirmation and Signature Confirmation Services With First-Class Mail and Package Services Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the *Domestic Mail Manual* (DMM) to clarify when it is permissible to use Delivery Confirmation service and Signature Confirmation service, particularly the limitation of these services to parcel-shaped mail for First-Class Mail and Package Services mail.

DATES: Submit comments on or before May 15, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645.

SUPPLEMENTARY INFORMATION: Prior to the implementation of Docket No. R2001–1 on June 30, 2002, customers and shippers wanting to mail lightweight parcels weighing 13 ounces or less and receive Delivery Confirmation or Signature Confirmation service could not choose First-Class Mail, even though the parcels otherwise would qualify for First-Class Mail based on their weight.

The Postal Service proposed in its Docket No. R2001–1 Request to extend Delivery Confirmation and Signature Confirmation to First-Class Mail parcels as a way of providing all parcel customers and shippers the opportunity to benefit from Delivery Confirmation and Signature Confirmation services without affecting their choice of subclass. The Postal Service believed that this change would increase not only the customer value of those special services but also the customer value of First-Class Mail as an effective class of mail for sending and receiving lightweight merchandise in parcels.

The extension of the two special services to First-Class Mail parcels was implemented on June 30, 2002. 67 FR 18684–18771 (April 16, 2002). This extension provided parcel customers with Delivery Confirmation and Signature Confirmation options afforded other parcel shippers using Priority Mail, Standard Mail, or Package Services. With a wide range of classes of mail and subclasses now eligible for these two services, shippers now have greater flexibility in determining which class to use for their parcels in order to meet particular customer requirements.

Another change resulting from proposals in Docket No. R2001–1 was the restriction of Delivery Confirmation and Signature Confirmation to parcels within the Package Services class of mail, which comprises the four subclasses of Parcel Post (including Parcel Select), Bound Printed Matter, Media Mail, and Library Mail. See 67 FR 18694–95. This restriction reflects operational concerns about the way the various processing categories of mail are sorted, distributed, and delivered, and the ability to provide Delivery Confirmation and Signature Confirmation services consistently. Before that change, all Package Services mail was eligible to use Delivery Confirmation and Signature Confirmation services, even though the two services could not be effectively provided to flat-size mail.

Both the First-Class Mail and Package Services changes addressed operational difficulties in isolating letter-size and flat-size mail for purposes of Delivery Confirmation and Signature Confirmation scanning, as well as the goal of offering Delivery Confirmation and Signature Confirmation to all parcel-shaped mail. The restriction of the two special services to parcels within Package Services and First-Class Mail is in line with the need for the Postal Service to identify Delivery Confirmation and Signature Confirmation mailpieces for proper scanning by the delivery employee. Unlike letter-size mail and flat-size mail, Priority Mail (regardless of shape) and parcels of all other classes are held out at the delivery units and handled separately by clerks and carriers. This is not the case for letter-size and flat-size mail, which is generally processed on automated equipment and receives minimal manual handling, especially for firms that receive large quantities of mail daily.

For Delivery Confirmation, Signature Confirmation, and nearly all special services requiring accountability at the time of delivery such as a customer signature, parcels predominate. For the two conspicuous exceptions, Certified Mail and Registered Mail, the letter-size or flat-size mailpieces are designed and handled so that they are separated from other letter-size and flat-size mail before the point of handling in delivery operations. On the other hand, Delivery Confirmation and Signature Confirmation rely on manual separation of parcel mail and recognition of the special services on that mail by the postal employee at the delivery unit for proper handling.

In order to implement the Docket No. R2001–1 limitation of Delivery Confirmation and Signature Confirmation services to ''parcel-shaped'' mail, for all subclasses but Priority Mail, and to restrict Delivery Confirmation and Signature Confirmation to shapes that are readily identified for scanning, the Postal Service defined the term ''parcel'' in the *Domestic Mail Manual* (DMM) (sections C100.5.0 and C700.1.0h), with regard to using either of those two special services with First-Class Mail and Package Services mail, as follows:

a. Has an address side with enough surface area to fit the delivery address, return address, postage, markings and endorsements, and special service label; and,

b. Is in a box or, if not in a box, is more than ¾ inch thick at its thickest point.

Proposed Changes

This current definition of ''parcel'' has created some uncertainty, particularly within First-Class Mail with the definition of a box. The Postal Service therefore proposes a revision to this DMM language to clarify the definition of a ''parcel.'' The proposal uses, with some additions, the current mail processing category definitions in DMM C050 for machinable parcel, irregular parcel (a nonmachinable parcel), and outside parcel (a nonmachinable parcel). An outside parcel can consist of such items as automobile tires and partially wrapped nursery trees that are generally not placed entirely in a sack or other mailing container.

Until now, these parcel categories have been used only in conjunction with mail preparation standards for Standard Mail and Package Services mail and for the application of the nonmachinable surcharge to certain Parcel Post pieces. As presented in this proposed rule, the current definitions of a parcel are modified solely for the purposes of using Delivery Confirmation and Signature Confirmation services, including removing the 6-ounce minimum weight limit for so-called ''machinable'' parcels sent as First-Class Mail, and adding a rigidity requirement for machinable parcels measuring no more than ¾ inch thick. This proposal does not modify any of the criteria in DMM C050 as they currently apply to the definition of Standard Mail and Package Services parcel mail preparation.

By using the existing standards and readily known parcel definitions, the Postal Service would more clearly define what constitutes a parcel for purposes of Delivery Confirmation and Signature Confirmation services, and their use would reduce the subjectivity of determining what distinguishes a ''box'' from a ''flat'' or a ''letter.'' At the same time, while ensuring, by the use of current parcel definitions in the DMM, that letter-size mail and flat-size mail are not construed as a parcel, the proposed revision would also ensure that shippers would benefit from a wide range of dimensions for various types of parcels. For example, a machinable parcel can measure as little as 6 inches long and 3 inches high if it is more than ¼ inch thick. On the other hand, a Parcel Post outside parcel (nonmachinable) can weigh as much as 70 pounds and measure up to 130 inches in combined length and girth.

For the reasons above, the Postal Service proposes revising and clarifying the definition of a First-Class Mail parcel and a Package Services parcel solely for the purposes of using Delivery Confirmation or Signature Confirmation with either of those two mail classes. The proposed language adopts the current definitions in DMM C050 for the

parcel mail processing category, and specifies some additional requirements to ensure that the services are available only for parcels if First-Class Mail or Package Services are used. For example, for machinable parcels measuring ¾ inch thick or less, only packaging that would maintain its parcel shape and integrity throughout processing and handling would be permitted.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual,* incorporated in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201'3219, 3403'3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual

* * * * *

C Characteristics and Content

* * * * *

[Amend C100 by removing current 5.0 and by redesignating current 6.0 as 5.0.]

C100 First-Class Mail

* * * * *

C700 Package Services

[Amend 1.0 by revising heading and by removing 1.0h.]

1.0 DIMENSIONS

* * * * *

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S918 Delivery Confirmation

1.0 BASIC INFORMATION

* * * * *

[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Delivery Confirmation service is available for First-Class Mail parcels defined in C050 as machinable, irregular, or outside parcels, with no minimum weight for such parcels; for all Priority Mail pieces; for Standard Mail pieces subject to the residual shape surcharge (electronic option only); and for Package Services parcels defined in C050 as machinable, irregular, and outside parcels. For the purposes of using Delivery Confirmation service with First-Class Mail and Package Services, a parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under DMM C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

[Revise 1.3 to read as follows:]

1.3 Ineligible Matter

Delivery Confirmation service is not available for the following:

a. Express Mail and Periodicals pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Standard Mail pieces not subject to the residual shape surcharge and all Enhanced Carrier Route Standard Mail pieces.

d. Package Services flat-size pieces.

e. Mail paid with precanceled stamps.

f. Mail addressed to APO/FPO destinations.

g. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

S919 Signature Confirmation

1.0 BASIC INFORMATION

* * * * *

[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Signature Confirmation service is available for First-Class Mail parcels defined in C050 as machinable, irregular, or outside parcels, with no minimum weight for such parcels; for all Priority Mail pieces; and for Package Services parcels defined in C050 as machinable, irregular, and outside parcels. For the purposes of using Signature Confirmation service with First-Class Mail and Package Services, a parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under DMM C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

[Revise 1.3 to read as follows:]

1.3 Ineligible Matter

Signature Confirmation service is not available for the following:

a. Express Mail, Periodicals, and Standard Mail.

b. First-Class Mail letter-size and flat-size pieces.

c. Package Services flat-size pieces.

d. Mail paid with precanceled stamps.

e. Mail addressed to APO/FPO destinations.

f. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect the changes will be published if this proposed rule is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–9194 Filed 4–14–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0378d; FRL–7483–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District; Proposed Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects preamble errors in the March 24, 2003 notice of proposed rulemaking pertaining to revisions of local gasoline tank vapor recovery rules in the Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District portions of the California State Implementation Plan.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: On March 24, 2003 (68 FR 14174), EPA proposed revisions to local gasoline tank vapor recovery rules in the Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District portions of the California State Implementation Plan. The notice of proposed rulemaking accurately identified the rules being revised in the **SUPPLEMENTARY INFORMATION** portion of the notice, but incorrectly referenced Imperial County and Monterey County Air Pollution Control Districts in the title and summary of the rule.

The correct title for the March 24, 2003 notice should read, ''Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District.''

The Summary section should read:

SUMMARY: EPA is proposing to approve revisions to Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline to stationary storage tanks and motor vehicle fuel tanks. The SMAQMD and SJVUAPCD revisions concern the emission of VOCs from the transfer of gasoline to motor vehicle fuel tanks. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

Today's notice does not otherwise change the remaining portions of the March 24, 2003 notice of proposed rulemaking.

Dated: April 3, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–9208 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7482–2]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (also, ''the Agency'' in this preamble) is proposing to grant final authorization to the hazardous waste program revisions submitted by the State of Texas Natural Resource Conservation Commission for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act Clusters VII through X , which contain Federal rules promulgated between July 1, 1995 to June 30, 2000. In the ''Rules and Regulations'section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before May 15, 2003.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Texas during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Texas Natural Resource Conservation Commission, 12100 Park S. Circle, Austin TX 78753–3087, phone (512) 239–1121.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–9043 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1013; MB Docket No. 03–87, RM–10686]

Radio Broadcasting Services; Dilley and Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pearsall RadioWorks, Ltd proposing the reallotment of Channel 237A from Pearsall to Dilley, Texas, and the modification of Station WVWG–FM's license accordingly. Petitioner also requests the allotment of Channel 227A at Pearsall as a replacement service. Channel 237A can be reallotted to Dilley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) east at petitioner's requested site. Additionally,

Channel 227A can be allotted to Pearsall with a site restriction of 1.7 kilometers (1.1 miles) west at petitioner's requested site. The coordinates for Channel 237A at Dilley are 28–39–55 North Latitude and 99–08–35 West Longitude; and the coordinates for Channel 227A at Pearsall 28–53–13 North Latitude and 99–06–40 West Longitude. Since Dilley and Pearsall are located within 320 kilometers (199 miles) of the U.S.-Mexican government, concurrence of the Mexican government has been requested. In accordance with section 1.420(i) of the Commission's rules, we will not accept competing expressions of interest for the use of Channel 237A at Dilley, Texas.

DATES: Comments must be filed on or before May 27, 2003, reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C,1300 North 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–87, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237A at Dilley; by removing Channel 237A; and by adding Channel 227A at Pearsall.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9170 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1015; MB Docket No. 03–86; RM–10685]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 250A at George West, Texas. The coordinates for Channel 250A at George West are 28–14–07 and 98–09–43. There is a site restriction 12 kilometers (7.4 miles) southwest of the community. Since George West is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 250A at George West.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–86, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9169 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–968; MB Docket No. 03–88; RM–10464]

Radio Broadcasting Services; Sonora, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Linda Crawford requesting the allotment of Channel 237C3 at Sonora, Texas. The coordinates for Channel 237C3 at Sonora are 30–36–35 and 100–43–09. There is a site restriction 8.7 kilometers (5.4 miles) northwest of the community. Since Sonora is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 237C3 at Sonora.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Linda Crawford, 3500 Maple Avenue, No. 1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–88, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237C3 at Sonora.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9168 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1081, MB Docket No. 03–95, RM–10652

Radio Broadcasting Services; Clarendon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 237A at Clarendon, Texas, as that community's second local service. Channel 237A can be allotted to Clarendon, consistent with the minimum distance separation requirements of the Commission's rules, provided there is a site restriction of 13.8 kilometers (8.6 miles) southeast of the community. The site restriction will prevent a short-spacing to the license site of Station KFLP–FM, Channel 237A, Floydada, Texas. The reference coordinates for Channel 237A at Clarendon are 34–52–47 North Latitude and 100–45–15 West Longitude.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, MB Docket No. 03–95, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237A at Clarendon.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9166 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–967, MB Docket No. 03–89, RM–10689]

Radio Broadcasting Services; Okeechobee, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by George Kalman proposing the allotment of Channel 291A at Okeechobee, Florida, as the community's first FM commercial service. The coordinates for Channel 291A at Okeechobee, Florida, are 27–20–30 NL and 80–54–08 WL. There is a site restriction 13 kilometers (8.1 miles) northwest of the community.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: George S. Kalman, 100 Ocean Trail Way, Apt. 909, Jupiter, Florida 33477.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–89, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Okeechobee, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9165 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1082; MB Docket No. 03–91, RM–10693]

Radio Broadcasting Services; Wofford Heights, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 251A at Wofford Heights, California, as the community's first local aural transmission service. Channel 251A can be allotted to Wofford Heights in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (7.9 miles) west to avoid short-spacings to the licensed sites of Station KRXV–FM, Channel 251B, Yermo, California, and Station KDFO–FM, Channel 253B1, Delano, California. The coordinates for Channel 251A at Wofford Heights are 35–42–28 North Latitude and 118–35–42 West Longitude.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–91, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Wofford Heights, Channel 251A.

Federal Communications Commission:

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9164 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–03–14452; Notice 01]

RIN 2127–AJ00

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2001 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2001. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 2001 vehicles (3.26 thefts per thousand vehicles) increased by 12.8 percent from the theft rate for CY/MY 2000 vehicles (2.89 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2001, the most recent calendar year for which data are available.

In calculating the 2001 theft rates, NHTSA followed the same procedures it used in calculating the MY 2000 theft rates. (For 2000 theft data calculations, see 67 FR 53756, August 19, 2002). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2001 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2001 vehicles of that line stolen during calendar year 2001, by the total number of vehicles in that line manufactured for MY 2001, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2001 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2000. The preliminary theft rate for MY 2001 passenger vehicles stolen in calendar year 2001 increased to 3.26 thefts per thousand vehicles produced, an increase of 12.8 percent from the rate of 2.89 thefts per thousand vehicles experienced by MY 2000 vehicles in CY 2000. For MY 2001 vehicles, out of a total of 217 vehicle lines, 68 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 68 vehicle lines with a theft rate higher than 3.5826, 56 are passenger car lines, 12 are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 2001 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document 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. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
1	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY MPV	248	10,792	22.9800
2	DAIMLERCHRYSLER	DODGE INTREPID	1,442	113,333	12.7236
3	GENERAL MOTORS	CHEVROLET METRO	199	15,999	12.4383
4	HONDA	ACURA INTEGRA	148	14,092	10.5024
5	DAIMLERCHRYSLER	PLYMOUTH NEON	400	38,651	10.3490
6	DAIMLERCHRYSLER	DODGE NEON	1,047	101,410	10.3244
7	DAIMLERCHRYSLER	DODGE STRATUS	1,115	109,015	10.2280
8	MITSUBISHI	MIRAGE	447	48,393	9.2369
9	SUZUKI	ESTEEM	152	18,713	8.1227
10	DAIMLERCHRYSLER	CHRYSLER LHS	86	11,413	7.5353
11	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA.	149	20,084	7.4188
12	MITSUBISHI	GALANT	729	102,990	7.0784
13	GENERAL MOTORS	CHEVROLET CAMARO	193	28,278	6.8251
14	MITSUBISHI	MONTERO	258	38,599	6.6841
15	GENERAL MOTORS	PONTIAC GRAND AM	1,192	182,220	6.5415
16	GENERAL MOTORS	BUICK REGAL	340	52,492	6.4772
17	MITSUBISHI	MONTERO SPORT	402	64,115	6.2700
18	JAGUAR	S–TYPE	126	20,102	6.2680
19	FORD MOTOR CO	FORD ESCORT	536	87,019	6.1596
20	FORD MOTOR CO	LINCOLN LS	256	41,817	6.1219
21	DAIMLERCHRYSLER	CHRYSLER 300M	228	37,284	6.1152
22	GENERAL MOTORS	PONTIAC SUNFIRE	445	73,808	6.0292
23	HONDA	ACURA NSX	1	167	5.9880
24	MITSUBISHI	DIAMANTE	77	13,667	5.6340
25	FORD MOTOR CO	FORD MUSTANG	869	155,039	5.6050
26	DAIMLERCHRYSLER	CHRYSLER SEBRING	407	73,543	5.5342
27	KIA MOTORS	OPTIMA	134	24,754	5.4133
28	DAIMLERCHRYSLER	CHRYSLER CONCORDE	147	28,030	5.2444
29	GENERAL MOTORS	CHEVROLET CAVALIER	1,136	217,438	5.2245
30	SUZUKI	VITARA/GRAND	281	53,810	5.2221
31	TOYOTA	COROLLA	1,201	230,246	5.2162
32	NISSAN	ALTIMA	706	137,253	5.1438
33	GENERAL MOTORS	CHEVROLET MALIBU	956	186,788	5.1181
34	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	200	39,668	5.0418
35	TOYOTA	LEXUS IS	155	30,959	5.0066
36	GENERAL MOTORS	CHEVROLET LUMINA	213	42,803	4.9763
37	GENERAL MOTORS	OLDSMOBILE ALERO	548	112,455	4.8731
38	GENERAL MOTORS	CADILLAC DEVILLE	428	87,909	4.8687
39	ISUZU	TROOPER	91	18,818	4.8358
40	KIA MOTORS	RIO	276	57,340	4.8134
41	MITSUBISHI	ECLIPSE	380	79,034	4.8081
42	MAZDA	MILLENIA	85	17,969	4.7304
43	GENERAL MOTORS	CHEVROLET MONTE CARLO	324	68,518	4.7287
44	AUDI	S4/QUATTRO	72	15,301	4.7056
45	TOYOTA	4RUNNER	373	83,052	4.4912
46	GENERAL MOTORS	GMC JIMMY S15/T15	209	46,905	4.4558
47	DAIMLERCHRYSLER	CHRYSLER NEON [1]	3	682	4.3988
48	NISSAN	MAXIMA	447	102,260	4.3712
49	HYUNDAI	SONATA	204	46,989	4.3414
50	ROLLS-ROYCE	BENTLEY ARNAGE	2	466	4.2918
51	GENERAL MOTORS	OLDSMOBILE INTRIGUE	168	39,491	4.2541
52	JAGUAR	XK8	19	4,501	4.2213
53	GENERAL MOTORS	CHEVROLET PRIZM	209	50,141	4.1682
54	DAIMLERCHRYSLER	JEEP CHEROKEE/GRAND	1,376	338,673	4.0629
55	HONDA	PRELUDE	46	11,329	4.0604
56	GENERAL MOTORS	OLDSMOBILE BRAVADA	44	10,935	4.0238
57	GENERAL MOTORS	PONTIAC BONNEVILLE	175	43,842	3.9916
58	KIA MOTORS	SEPHIA/SPECTRA	296	74,516	3.9723
59	GENERAL MOTORS	PONTIAC GRAND PRIX	466	117,647	3.9610
60	MERCEDES–BENZ	129 (SL–CLASS)	16	4,080	3.9216
61	ISUZU	RODEO	242	62,963	3.8435
62	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	629	163,771	3.8407
63	GENERAL MOTORS	CHEVROLET CORVETTE	124	33,204	3.7345
64	KIA MOTORS	SPORTAGE	215	57,927	3.7116
65	FORD MOTOR CO	LINCOLN TOWN CAR	255	68,832	3.7047
66	FORD MOTOR CO	MERCURY SABLE	364	98,867	3.6817
67	DAEWOO	LEGANZA	73	20,112	3.6297

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
68	FORD MOTOR CO	FORD FOCUS	964	267,470	3.6041
69	TOYOTA	CELICA	126	35,540	3.5453
70	FORD MOTOR CO	FORD TAURUS	1,238	351,813	3.5189
71	TOYOTA	LEXUS GS	105	29,858	3.5166
72	GENERAL MOTORS	CADILLAC SEVILLE	88	25,157	3.4980
73	MERCEDES–BENZ	215 (CL–CLASS)	11	3,162	3.4788
74	SUZUKI	SWIFT	15	4,375	3.4286
75	MAZDA	626	173	51,355	3.3687
76	BMW	Z8	3	895	3.3520
77	HYUNDAI	ACCENT	256	77,491	3.3036
78	NISSAN	INFINITI Q45	6	1,846	3.2503
79	DAEWOO	LANOS	69	21,626	3.1906
80	TOYOTA	CAMRY	1,123	353,219	3.1793
81	GENERAL MOTORS	CHEVROLET IMPALA	597	188,248	3.1713
82	NISSAN	SENTRA	335	106,549	3.1441
83	FORD MOTOR CO	MERCURY MOUNTAINEER	45	14,439	3.1166
84	TOYOTA	LEXUS LX	31	9,967	3.1103
85	DAIMLERCHRYSLER	CHRYSLER PROWLER	5	1,632	3.0637
86	FORD MOTOR CO	FORD EXPLORER	1,050	344,002	3.0523
87	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	649	218,302	2.9729
88	JAGUAR	XJ8	17	5,960	2.8523
89	HYUNDAI	TIBURON	64	22,713	2.8178
90	GENERAL MOTORS	OLDSMOBILE AURORA	140	50,034	2.7981
91	GENERAL MOTORS	SATURN LS	222	79,562	2.7903
92	NISSAN	FRONTIER PICKUP	286	102,545	2.7890
93	MERCEDES–BENZ	220 (S–CLASS)	85	31,977	2.6582
94	FORD MOTOR CO	FORD RANGER PICKUP	708	266,960	2.6521
95	BMW	3	307	117,873	2.6045
96	DAEWOO	NUBIRA	35	13,450	2.6022
97	VOLVO	C70	14	5,462	2.5632
98	NISSAN	INFINITI G20	18	7,087	2.5399
99	JAGUAR	XKR	4	1,588	2.5189
100	DAIMLERCHRYSLER	JEEP WRANGLER	163	66,366	2.4561
101	HONDA	ACURA 3.2 CL	94	38,679	2.4303
102	GENERAL MOTORS	CHEVROLET ASTRO VAN	104	42,909	2.4237
103	GENERAL MOTORS	BUICK PARK AVENUE	88	36,407	2.4171
104	JAGUAR	XJR	3	1,256	2.3885
105	HYUNDAI	SANTA FE	121	51,088	2.3685
106	TOYOTA	LEXUS LS	75	31,738	2.3631
107	HYUNDAI	XG	47	19,894	2.3625
108	GENERAL MOTORS	BUICK LESABRE	327	140,202	2.3323
109	HONDA	S2000	23	9,945	2.3127
110	MAZDA	PROTEGE	110	47,754	2.3035
111	HONDA	PASSPORT	39	16,999	2.2943
112	MERCEDES–BENZ	208 (CLK–CLASS)	34	14,940	2.2758
113	GENERAL MOTORS	GMC SAFARI VAN	33	14,549	2.2682
114	GENERAL MOTORS	BUICK CENTURY	285	126,295	2.2566
115	FORD MOTOR CO	MERCURY COUGAR	58	25,810	2.2472
116	AUDI	TT/QUATTRO	47	21,022	2.2358
117	BMW	7	57	25,548	2.2311
118	DAIMLERCHRYSLER	PLYMOUTH PROWLER	3	1,353	2.2173
119	VOLVO	S40	69	31,145	2.2154
120	JAGUAR	VANDEN PLAS	8	3,617	2.2118
121	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	354	166,708	2.1235
122	FORD MOTOR CO	FORD F150 PICKUP	293	138,481	2.1158
123	HONDA	ACURA 3.5 RL	7	3,312	2.1135
124	VOLVO	S80	53	25,203	2.1029
125	SUBARU	IMPREZA	19	9,205	2.0641
126	TOYOTA	TACOMA PICKUP	330	160,222	2.0596
127	FORD MOTOR CO	MERCURY GRAND MARQUIS	215	104,890	2.0498
128	HYUNDAI	ELANTRA	217	106,418	2.0391
129	GENERAL MOTORS	GMC SONOMA PICKUP	86	42,536	2.0218
130	GENERAL MOTORS	SATURN SC	94	46,557	2.0190
131	TOYOTA	TUNDRA PICKUP	38	19,191	1.9801
132	TOYOTA	RAV4	172	87,108	1.9746
133	GENERAL MOTORS	SATURN SL	214	108,946	1.9643
134	TOYOTA	ECHO	103	52,694	1.9547
135	NISSAN	PATHFINDER	172	89,836	1.9146

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
136	BMW	5	76	40,591	1.8723
137	PORSCHE	911	20	10,931	1.8297
138	VOLKSWAGEN	JETTA	281	153,706	1.8282
139	NISSAN	INFINITI I30	70	39,505	1.7719
140	HONDA	CIVIC	603	341,401	1.7663
141	NISSAN	XTERRA	170	96,255	1.7661
142	HONDA	ACCORD	665	379,508	1.7523
143	VOLKSWAGEN	GOLF/GTI	56	32,736	1.7107
144	VOLVO	V40	7	4,109	1.7036
145	SAAB	9–5	39	23,016	1.6945
146	MERCEDES–BENZ	ML	68	40,257	1.6891
147	MAZDA	B–SERIES PICKUP	46	27,490	1.6733
148	AUDI	A4/QUATTRO	58	35,023	1.6561
149	NISSAN	INFINITI QX4	59	36,778	1.6042
150	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	279	176,326	1.5823
151	GENERAL MOTORS	CADILLAC CATERA	18	11,568	1.5560
152	GENERAL MOTORS	PONTIAC AZTEK	63	41,111	1.5324
153	TOYOTA	LEXUS ES	54	35,282	1.5305
154	FORD MOTOR CO	FORD WINDSTAR VAN	275	179,687	1.5304
155	VOLVO	V70	25	16,408	1.5236
156	GENERAL MOTORS	SATURN SW	6	3,973	1.5102
157	FORD MOTOR CO	LINCOLN CONTINENTAL	32	21,341	1.4995
158	ISUZU	VEHICROSS	2	1,347	1.4848
159	AUDI	A6/QUATTRO	39	26,592	1.4666
160	PORSCHE	BOXSTER	19	12,979	1.4639
161	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	230	158,303	1.4529
162	TOYOTA	MR2 SPYDER	10	6,950	1.4388
163	FORD MOTOR CO	FORD ESCAPE	214	151,295	1.4145
164	GENERAL MOTORS	PONTIAC MONTANA VAN	71	50,437	1.4077
165	TOYOTA	LEXUS RX	121	86,206	1.4036
166	MERCEDES–BENZ	170 (SLK–CLASS)	22	16,294	1.3502
167	MERCEDES–BENZ	210 (E–CLASS)	67	49,628	1.3500
168	HONDA	ACURA 3.2 TL	46	34,860	1.3196
169	GENERAL MOTORS	CHEVROLET VENTURE VAN	110	85,346	1.2889
170	AUDI	S8/QUATTRO	1	814	1.2285
171	DAIMLERCHRYSLER	DODGE VIPER	2	1,643	1.2173
172	NISSAN	QUEST VAN	37	31,402	1.1783
173	TOYOTA	SIENNA VAN	99	85,794	1.1539
174	VOLKSWAGEN	NEW BEETLE	83	72,350	1.1472
175	MERCEDES–BENZ	203 (C–CLASS)	36	32,931	1.0932
176	VOLKSWAGEN	PASSAT	90	82,870	1.0860
177	VOLKSWAGEN	CABRIO	16	15,479	1.0337
178	TOYOTA	AVALON	79	77,925	1.0138
179	GENERAL MOTORS	CHEVROLET TRACKER	108	108,204	0.9981
180	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	36	36,278	0.9923
181	FORD MOTOR CO	MERCURY VILLAGER VAN	18	18,169	0.9907
182	VOLVO	S60	32	33,335	0.9600
183	SAAB	9–3	20	20,920	0.9560
184	VOLVO	XC	25	27,082	0.9231
185	AUDI	A8/QUATTRO/L	2	2,177	0.9187
186	HONDA	CR–V	99	117,003	0.8461
187	VOLKSWAGEN	EUROVAN/CAMPER	3	3,652	0.8215
188	BMW	M/Z3	15	18,627	0.8053
189	GENERAL MOTORS	CADILLAC ELDORADO	8	10,289	0.7775
190	MAZDA	TRIBUTE	42	55,827	0.7523
191	TOYOTA	HIGHLANDER	52	69,706	0.7460
192	SUBARU	LEGACY/OUTBACK	73	98,623	0.7402
193	HONDA	ACURA MDX	30	41,081	0.7303
194	MAZDA	MX–5 MIATA	12	18,040	0.6652
195	MAZDA	MPV	23	36,356	0.6326
196	SUBARU	FORESTER	37	63,015	0.5872
197	FORD MOTOR CO	FORD LTD/CROWN VICTORIA	50	89,572	0.5582
198	GENERAL MOTORS	SATURN LW	5	9,223	0.5421
199	DAIMLERCHRYSLER	CHRYSLER VOYAGER	78	169,370	0.4605
200	TOYOTA	PRIUS	7	15,773	0.4438
201	AUDI	ALLROAD/QUATTRO	3	6,840	0.4386
202	HONDA	ODYSSEY MINIVAN	54	123,522	0.4372
203	QUANTUM TECH.	CAVALIER	1	2,417	0.4137

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
204	HONDA	INSIGHT	1	3,426	0.2919
205	ASTON-MARTIN	DB–7/VANTAGE/COUPE/VOLANTE	0	348	0.0000
206	ROLLS-ROYCE	BENTLEY AZURE	0	100	0.0000
207	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	22	0.0000
208	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	8	0.0000
209	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	2,203	0.0000
210	FERRARI	360	0	723	0.0000
211	FERRARI	456	0	64	0.0000
212	FERRARI	550	0	290	0.0000
213	LAMBORGHINI	DB132/144 DIABLO	0	150	0.0000
214	ROLLS-ROYCE	CORNICHE	0	45	0.0000
215	ROLLS-ROYCE	PARK WARD	0	28	0.0000
216	ROLLS-ROYCE	SILVER SERAPH	0	51	0.0000
217	MITSUBISHI	NATIVA [2]	0	1,653	0.0000

[1] This vehicle was manufactured under the Chrysler nameplate for sale in a U.S. Territory only (Guam, American Samoa, Puerto Rico) and the Virgin Islands (St. Thomas and St. Croix).
[2] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of the Montero Sport line.

Stephen R. Kratzke,
Associate Administrator for Rulemaking.

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BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01; I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Reopening proposed rule public comment period.

SUMMARY: This document reopens for 15 days the public comment period for a proposed rule establishing a fishing capacity reduction program for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan. The reopening's intent is to seek additional public comment about, and clarification of, issues in previous public comments about the proposed rule.

DATES: Comments will be accepted until April 30, 2003.

ADDRESSES: Mail or fax written comments to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone who wants the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule may obtain it from Michael L. Grable.

Anyone who wants to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau AK 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule Background

General

NMFS published the proposed rule in the **Federal Register** (67 FR 76329) on December 12, 2002. The rule proposed a fishing capacity reduction program (program) for the crab species (crab) managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.

The rule proposed to reduce crab fishing capacity by paying bidders whose bids the program accepts to surrender their crab fishing interests for revocation or restriction. A loan, repaid by post-reduction crab landing fees, would finance 100% of program cost.

On December 30, 2002, NMFS corrected (67 FR 79550) the proposed rule and, on January 28, 2003, responded to public comment by extending (68 FR 4161) the proposed rule's comment period until February 27, 2003.

NMFS is reopening the comment period for 15 days to seek additional public comment about, and clarification of, issues in previous public comments about the proposed rule.

Reduction Vessel and Reduction Vessel Fishing History

The rule proposed to require each program bidder's reduction fishing interest to include the bidder's:

(1) Crab reduction permit,
(2) Reduction vessel fishing history,
(3) Non-crab reduction permit, and
(4) Reduction vessel fishing privilege.

Proposed rule § 600.1018(a) defines the first two of these bid elements as follows:

(1) ''Crab reduction permit'' means a non-interim crab license [under the license limitation program] endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery, and

(2) ''Reduction vessel fishing history'' means, for each bid, the reduction vessel's complete history of documented

harvest upon any part of which NMFS based issuance of the bidder's crab reduction permit and non-crab reduction permit.

The rule proposed the following basic requirements (which are here paraphrased) for the four bid elements:

(1) Proposed rule § 600.1018(h)(2) requires the reduction vessel in each bid to be the same vessel whose crab fishing history during the general qualification period (GQP), endorsement qualification period (EQP), and recent participation period (RPP) gave rise to the crab license which the bidder includes in its bid as its crab reduction permit.

(2) Proposed rule § 600.1018(h)(3) defines the reduction vessel fishing privilege in each bid as the reduction vessel's fisheries trade endorsement, its qualification for ever being placed under foreign registry or operational authority, and its worldwide fishing privileges of every kind,

(3) Proposed rule § 600.1018(h)(4) requires the crab reduction permit in each bid to be the crab license which NMFS issued on the basis of the GQP, EQP, and RPP crab fishing history of the bidder's reduction vessel. The crab reduction permit must be non-interim and include at least one area/species endorsement for any one or more reduction endorsement fisheries, and

(4) Proposed rule § 600.1018(h)(6) requires the reduction vessel fishing history in each bid to be the whole of the fishing history of the reduction vessel upon any part of which NMFS based issuance of the crab reduction permit and the non-crab reduction permit which the bidder includes in its bid.

For vessels which were lost or destroyed before the RPP, there are proposed rule exceptions to the requirements in (1), (3), and (4) immediately above. Nevertheless, bids involving these lost or destroyed vessels still require extant reduction vessels.

The proposed rule used these definitions and requirements as a means of matching, for program reduction purposes, each crab license with the crab vessel whose fishing history gave rise to the crab license. NMFS believed it was necessary for the proposed rule to do this because:

(1) Crab licences, crab vessels, and the vessels' crab fishing histories are all independently transferable,

(2) Crab harvests are identified by crab vessels rather than by crab licenses,

(3) Crab license and crab vessel transfers are a matter of public record, but crab fishing history transfers are not,

(4) Crab vessels were not designated on crab licenses until 2002, and

(5) There was an inference in the regulations implementing Amendment 10 to the crab fishery management plan (Amendment 10) that crab fishing histories must have been completely earned on one vessel.

Although the proposed rule's approach would apparently have worked well for almost all potential program bidders, the public comments suggest that it would be problem for a few.

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

The program's statutory authority requires scoring bids in a reverse auction by dividing each bid price by the total value of crab landed from 1990 through 1999, under each crab reduction permit, in ''the most recent five-year period'' in each of seven area/species endorsement fisheries.

The statute also requires using these data, in a different calculation, to allocate the reduction loan among the six reduction endorsement fisheries whose post-reduction fees will repay the loan.

The proposed rule's § 600.1018(a) definition of the term ''bid crab'' defines ''the most recent five-year period'' as ''the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31,1999.''

Although the proposed rule's approach would apparently have worked well for most potential program bidders, the public comments suggest it would be a problem for some.

II. Public Comments About The Proposed Rule

Reduction Vessel and Crab Fishing History for Reduction Purposes

The pertinent public comments assert (1) that the fishing history of a particular vessel functionally transfers from the vessel at the time that its fishing history gives rise to issuance of a crab license and (2) that the fishing history thereafter becomes the history of the license rather than the history of the vessel. This assertion includes not only that vessel's crab fishing history during the vessel moratorium period (VMP), GQP, EQP, and RPP, but also all the vessel's predecessor fishing history.

Accordingly, the program would no longer need to require a bid's reduction vessel to be the same vessel whose crab fishing history during the GQP, EQP, and RPP gave rise to the bid's crab reduction permit. Pre-license fishing history would no longer be a reduction-vessel determinant because that history would have transferred from the vessel which earned that history to the crab license to whose issuance that history gave rise. A program bidder's reduction vessel could be, for example, the crab vessel designated, at the time of bidding, on the bid's crab reduction permit. In most bids, this would probably be the vessel whose fishing history did, in fact, give rise to the bid's crab reduction permit; but a reduction vessel other than the vessel which did so would also be acceptable.

Additionally, each bid's pre-license crab fishing history for reduction purposes would be the fishing history of the vessel or vessels which gave rise to issuance of, and was consequently transferred (as the comments assert) to, the crab license corresponding to the bid's crab reduction permit.

Public comments also assert that, under appropriate circumstances involving lost or destroyed vessels, a reduction vessel would not need to be extant at the time of program bidding.

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

Instead of the years involved in these calculations being (as the rule proposed) the most recent 5 years in which each area/species endorsement fishery was open for directed fishing, the pertinent public comments assert that these years should be the most recent 5–year period in which each program bidder landed, under a crab reduction permit, crab in each area/species endorsement fishery.

III. Discussion and Questions

Reduction Vessel and Crab Fishing History for Reduction Purposes

Crab fishing history is an important program factor. Crab fishing history is the basis upon which the program must score bids and allocate repayment of the reduction loan between the six reduction endorsement fisheries. For this purpose, however, only crab fishing history during the period from January 1, 1990, through December 31, 1999, is relevant. The program's authorizing statute does not allow considering crab fishing history during any other period. Moreover, crab fishing history has been the past qualification basis for crab licenses and may potentially be the future qualification basis for other forms of crab harvesting privileges, including harvesting allocations.

If an identifiable vessel's pre-license crab fishing history does, as the pertinent public comments assert,

transfer to the crab license to whose issuance that fishing history gave rise, then:

(1) The issued crab license acquires the vessel's pre-license crab fishing history,

(2) The vessel loses its pre-license crab fishing history,

(3) The vessel thereafter transfers without its pre-license crab fishing history, and

(4) The vessel's subsequent fishing history is its post-license fishing history.

The January 1, 1990, beginning of the crab fishing history period for program bid scoring and reduction loan allocation purposes is not earlier than the January 1, 1988, beginning of the VMP. However, the December 31, 1999, ending of the bid scoring and reduction loan allocation period is later than the ending of the RPP.

If the reduction vessel in each program bid were to be the vessel designated, at the time of bidding, on the bid's crab reduction permit, there would be two possibilities:

(1) The bid's reduction vessel could be the same as the vessel whose pre-license crab fishing history transferred to the bid's crab reduction permit. In this possibility, both the pre-license and the post-license history required for bid scoring and loan allocation purposes would be that of the bid's reduction vessel, and

(2) The bid's reduction vessel could be a vessel other than the vessel whose pre-license crab fishing history transferred to the bid's crab reduction permit. In this possibility, the pre-license history required for bid scoring and loan allocation purposes would have been earned by a vessel other than the bid's reduction vessel. Presumably, however, the post-license history required for this purpose would be the reduction vessel's remaining fishing history, which had not previously transferred to some other crab license (even though that vessel may not have been designated on the crab license corresponding to the bid's crab reduction permit until more than a year after NMFS issued that crab license).

Accordingly, to assist NMFS in considering the pertinent public comments, NMFS solicits the public's response to the following questions:

(1) Does the crab fishing history of a particular vessel always functionally transfer from the vessel at the time the history gives rise to issuance of a crab license?

(2) Does the crab fishing history, thereafter, become the history of the crab license to which the history gave rise rather than the history of the vessel which earned the history?

(3) Should the pre-license portion of the crab fishing history for reduction purposes always be the pre-license history of the vessel whose history gave rise to issuance of the crab license corresponding to the bid's crab reduction permit?

(4) What should be the ending point of this pre-license crab fishing history? The end of the RPP? The date on which a post-RPP crab license was issued? Some other date specified in the crab fishery management plan regulations? Some other date corresponding to some other point?

(5) What should be the beginning point of this pre-license crab fishing history? The point at which the vessel which earned this history first existed? Some other date corresponding to some other point?

(6) Should the post-license portion of crab fishing history for reduction purposes always be the post-license history of the bid's reduction vessel (e.g., the vessel designated, at the time of bidding, on the bid's crab reduction permit)? If not, what else should it be and why?

(7) What are the specific instances in which persons would have combined the pre-license crab fishing history of different vessels to give rise to issuance of the crab license corresponding to a bid's crab reduction permit? In each such specific instance, what should be the specific beginning and ending points which determine how much of each different vessel's pre-license crab fishing history gave rise to issuance of the crab license and, consequently, transferred from each of these vessels to the crab license?

(8) If program regulations adopted, for reduction purposes, the pertinent public comments' approach to reduction vessels and crab fishing histories, would this create any corollary problems? If so, what would they be and how should they best be resolved?

(9) If program regulations adopted the pertinent public comments' approach, are the required data for implementing the program still determinable and readily available under that approach?

(10) Overall, which approach in this regard would accomplish the most good for the most potential program bidders--the approach which the rule proposed or the approach which pertinent public comments have suggested? Why?

(11) Would it be appropriate to use both these approaches-- the first approach for some vessels and the second approach for other vessels or should only one of the two approaches be used? Why?

Moreover, what specific circumstances involving lost or destroyed vessels would be appropriate, in each conceivable instance, for not requiring a reduction vessel to be extant at the time of program bidding?

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

Overall, which of the approaches would accomplish the most good for the most potential program bidders? Why?

NMFS believes additional public comment about these matters will facilitate a rule which best fulfills the program's statutory objective.

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

Dated: April 9, 2003.

Rebecca Lent,

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

[FR Doc. 03–9232 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I. D. 031903E]

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from Mr. John Gauvin and Mr. Brent Paine. If granted, this permit would be used to test salmon excluder devices in the Bering Sea pollock trawl fishery. It is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) by testing methods of reducing salmon bycatch in the Bering Sea pollock trawl fishery.

ADDRESSES: Copies of the EFP application are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. The information gathered through this EFP may lead to future rulemakings.

NMFS received an application for an EFP from Mr. John Gauvin and Mr. Brent Paine. The purpose of the EFP is to test the effectiveness of salmon excluder devices for pollock trawls. The goal is to develop a device for pollock trawls that reduces salmon bycatch without significantly lowering catch rates of pollock.

The EFP is necessary to allow the applicants to demonstrate whether such a device could be developed to reduce salmon bycatch. The taking of salmon during the experiment is crucial for determining the effectiveness of the device. Salmon taken during the experiment will not be counted toward the Chinook and Chum bycatch limits under § 679.21(e)(1)(vii) and (viii). The potential exists that the amount of pollock trawl salmon bycatch by the industry during the EFP period would approach or exceed the salmon bycatch limits. The additional salmon taken during the experiment would create an additional burden on the pollock trawl industry and may lead to closures of the salmon savings areas, if the EFP salmon is counted toward the salmon bycatch limits. Approximately 200 Chum salmon and 30 Chinook salmon are required to support the experiment, well below the BSAI annual limits of 33,000 chinook salmon and 42,000 chum salmon.

The applicants have also requested an exemption from closures of the Chinook Salmon Savings Area and the Chum Salmon Savings Area (§ 679.21(e)(7)(vii) and (viii)). The experiment must be conducted in areas of salmon concentration to ensure a sufficient sample size. The salmon savings areas are areas of known concentration of salmon and provide an ideal location for conducting the experiment and ensuring that the vessel encounters concentrations of salmon.

Groundfish taken under the EFP also would not be applied to the total allowable catch (TAC) limit specified in the annual harvest specifications (§ 679.20), but the amount taken is expected to result in total groundfish harvests well below the acceptable biological catch (ABC) amounts for the BSAI. A total of approximately 2,270 metric tons (mt) of Bering Sea pollock would be taken in the fall of 2003 and the spring of 2004 and would not be included in the harvest applied against the Bering Sea pollock TAC of approximately 1.5 mt. The Bering Sea pollock ABC is 2.33 million mt, well above the combined TAC and the additional harvest anticipated from the experiment.

These levels of harvest and manner of harvest are not expected to have a significant impact on the marine environment, but the potential effects on the marine environment will be further analyzed during review of the application.

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its April 3–8, 2003, meeting which will be held at the Hilton Hotel, Anchorage, Alaska. The applicants have been invited to appear in support of the application, if the applicants desire. Interested persons may comment on the application at the Council meeting during public testimony.

A copy of the application is available for review from NMFS (see **ADDRESSES**).

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 9, 2003.

Richard W. Surdi,

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

[FR Doc. 03–9231 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 72
Tuesday, April 15, 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

Submission for OMB Review; Comment Request

April 9, 2003

The Department of Agriculture has submitted the following information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: CSREES Proposal Review Process.

OMB Control Number: 0524–NEW.

Summary of Collection: This information collection is authorized under 7 CFR Section 3015.158, which governs competition in the awarding of discretionary grants and cooperative agreements. These regulations set forward the standard that proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. The Cooperative State Research, Education, and Extension Service (CSREES) will collect information using the ''Proposal Review Sheet'' or the ''Reviewer Worksheet''.

Need and Use of the Information: CSREES will collect information to ensure that proposals are of high quality and are consistent with the goals and requirements of the funding program. CSREES uses the results of the proposal evaluation to determine whether a proposal should be declined or recommended for award. If the information is not collected, it would be difficult for a review panel and CSREES staff to determine which projects warrant funding.

Description of Respondent: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 4,520.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 113,000.

National Agricultural Statistics Service

Title: Vegetable Survey.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Vegetable estimates are an integral part of this function. The vegetable program is complex in that some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed the first week of April for their intended acreage of vegetables for processing and the first week of July for acreage contracted. The fresh market vegetable program consists of weekly estimates during the growing season for tomatoes in Florida. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage planted and harvested, production, price, and utilization for the varies crops. The estimates provided vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit Dept.

Number of Respondents: 31,391.

Frequency of Responses: Reporting: Annually; Other (seasonally).

Total Burden Hours: 5,021.

Foreign Agricultural Service

Title: Foreign Market Development Cooperator Program and the Market Access Program.

OMB Control Number: 0551–0026.

Summary of Collection: The authority for the Foreign Market Development Cooperator Program and the Market Access Program (MAP) is contained in Title VII and section 203 of the Agricultural Trade Act of 1978, U.S.C. 5721, *et. seq.* The primary objective of the Foreign Market Development Cooperator Program and the Market Access Program is to encourage and aid in the creation, maintenance and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. Personnel of the Foreign Agricultural Service (FAS) administer the programs. Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to FAS.

Need and Use of the Information: FAS will collect information to manage, plan, evaluate, and account for government resources. Without the submission of information, the programs could not be implemented.

Description of Respondents: Not-for-profit institutions; State, Local, or Tribal government.

Number of Respondents: 71.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 91,070.

Risk Management Agency

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

OMB Control Number: 0563–0057.

Summary of Collection: The Federal Corp Insurance Act (ACT), as amended in 1994, 1996, 1998, and 2000 expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products, provided for independent review of crop insurance products, and gave contracting authority for the development of new products. The expansion mission of the Risk Management Agency (RMA) is to meet the obligation of mandatory program development and to expand the current program to provide risk management products to the greatest number of people covering the greatest dollar value of commodities. RMA prepares the crop insurance policy provisions, underwriting guidelines, actuarial documents, and loss adjustment standards. Producers are required to report specific data when applying for crop insurance. The information supplied must be accurate and complete so insurance companies and Federal Crop Insurance corporation (FCIC) can determine liability, subsidy premium, and the amount of indemnity and is necessary for administering the crop insurance program. The FCIC is the only Federal agency that administers crop insurance.

Need and Use of the Information: RMA will collect information indicating the crop, type, variety, and practice that will be insured in the state and county along with the premium rates and crop price elections that will be available. The information is used to determine liability and premium. The information collected will be used Federal Agencies, RMA, crop insurance companies reinsured by FCIC, and other agencies that require such information in the performance of their duties. If the information collected is not submitted by the specified dates, the producer may not have insurance coverage.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 14,496.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly; Semi-Annually; Annually.

Total Burden Hours: 13,113.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsible used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and that loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS. RUS will collect information using form 300 Review Rate Summary.

Need and Use of the Information: RUS will collect information to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for ''catch-up'' programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 229.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 916.

Rural Utilities Service

Title: RUS Specification for Quality Control and Inspection of Timber Products.

OMB Control Number: 0572–0036.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended.

Need and Use of the Information: RUS will use the information in verifying acceptability of poles and crossarms purchased by RUS borrowers. Each year, RUS borrowers are required to submit an Annual Summary of Purchases that provides a list of plants from which it obtained poles or crossarms during the preceding calendar year and Treaters must provide notification that they will treat poles for the upcoming year. Test reports are needed so that the purchaser, the inspectors, and RUS will be able to spot-check the general accuracy of the tests.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40,763.

Rural Utility Service

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Summary of Collection: Under the authority of the Rural Electrification Act of 1936 (ACT), as amended 7 U.S.C. 901 *et seq.,* the Administrator is authorized and empowered to make loans under certain specified circumstances for the purpose of furnishing and improving telephone service in rural areas. RUS, in representing the Federal Government as Mortgagee, relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper Act purposes. Borrowers are required to furnish a full and complete report of their financial condition, operations and cash flows, in form and substance satisfactory to RUS.

Need and Use of the Information: RUS will collect information to evaluate borrowers' financial performance, determine whether current loans are at financial risk, and determine the credit worthiness of future losses. If information were not collected, it would delay RUS' analysis of the borrowers' financial strength, thereby adversely impacting current lending decisions.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,677.

Rural Housing Service

Title: Form RD 410–8, Application Reference Letter (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection: Form RD 410–8, Applicant Reference Letter, provides credit information and is used by Rural Housing Service (RHS) to obtain information about an applicant's credit history that might not appear on a credit report. It can be used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a

credit report. The form provides RHS with relevant information about the applicant's creditworthiness and is used to make better decisions.

Need and use of the Information: RHS will collect information to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Animal and Plant Health Inspection Service

Title: 9 CFR 160–162, Veterinary Accreditation Program.

OMB Control Number: 0579–0032.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take action to prevent and to manage exotic diseases such as foot-and-mouth and rinderpest. Diseases prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service's (APHIS) ability to complete in exporting animals and animal products. Because APHIS does not have sufficient numbers of Federal personnel to perform all of the disease prevention work that must be done, APHIS relies heavily on assistance from veterinarians in the private sector. Regulations governing the Veterinary Accreditation Program are found in Title 9 of the Code of Federal Regulations, parts 160, 161, and 162. Operating this important program requires APHIS to engage in a number of information collection activities in the form of applications for veterinary accreditation, veterinary accreditation orientation and training, paperwork associated with tasks performed by our accredited veterinarians (such as completing certificates, applying and removing official seals, and completing test reports); reviewing applications for veterinary accreditation and re-accreditation, recordkeeping, and updating information on accredited veterinarians. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information to determine that a veterinarian has met the requirements for being accredited, or for obtaining re-accreditation. APHIS will also collect information to ensure that accredited veterinarians are knowledgeable of current Federal and State animal health regulations, objectives and programs and are competent in their application. If information is not collected it would significantly destroy APHIS' ability to operate the Veterinary Accreditation Program.

Description of Respondents: Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 88,244.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 63,031.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

Needs and Use of the Information: AMS will collect information for the production of Market News reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and is gathered through confidential telephone and face-to-face interviews by market reporters.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 18,347.

Frequency of Response: Reporting; Weekly; Monthly.

Total Burden Hours: 120,964.

Food and Nutrition Service

Title: Food Stamp Employment and Training (E & T) Program Activity Report.

OMB Control Number: 0584–0339.

Summary of Collection: The Balanced Budget Act of 1997 (Pub. L. 105–33), enacted on August 5, 1997, modified the Employment and Training (E&T) Program so that States' efforts are now focused on a particular segment of the food stamp population—able-bodied adults without dependents (ABAWDs). Section 6(d) of the Foot Stamp Act of 1977 and 7 CFR 273.7 require as a condition of eligibility each food stamp household members not exempt shall be registered for employment by the State agency at the time of application and once every twelve months thereafter. This requirement pertains to non-exempt food stamp household member age 16 to 60. Each State agency must screen each work registrant to determine whether to refer the individual to its E&T Program. States' E&T Programs are federally funded through an annual E&T grant. Both the Food Stamp Act and regulations require States to file quarterly reports about their E&T Programs so that the Food and Nutrition Service (FNS) can monitor their performance.

Need and Use of the Information: FNS will collect quarterly reports about their E&T programs so that the Department can monitor State performance to ensure that the program is being efficiently and economically operated. Without the information FNS would be unable to make adjustments or allocate exemptions in accordance with the statute.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Response: Reporting; Quarterly; Annually.

Total Burden Hours: 29,455.

Forest Service

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Control Number: 0596–0108.

Summary of Collection: The Wilderness Act (Pub. L. 88–577) directs that wilderness be managed to preserve natural conditions and to provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. To meet these management goals, managers must adapt their programs to changes in the amount and type of use and resultant conditions. It is also important for managers to be aware of likely visitor response to proposed management actions and their preferences for resource conditions. Very little is known about trends in the characteristics, activities and preferences of visitors to wilderness and other wildlands. The Forest Service (FS) will collect information using mail back survey forms, face-to-face and on-site

interviews to establish usage baselines and monitor trends in some areas for critical use and user characteristics for representatives Forest Service wilderness area.

Need and Use of the Information: FS will collect information from visitors to find out how many times they visit, when they plan their next visit, or if they plan to visit at all. Visitors will be asked, when visiting, if they come in groups, and if so, the size of those groups and how long they stay when visiting. Also, visitors will be asked do they use equipment such as stoves, wood for fires and do they have preferences for social conditions? If the information is not collected FS will have no basis for making management decisions and establishing policy for guiding wilderness management in general.

Description of Respondents: Individuals or households.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 416.

Rural Development

Title: Rural Empowerment Zones and Enterprise Communities (Ongoing Reporting Requirements).

OMB Control Number: 0570–0027.

Summary of Collection: The Community Renewal Tax Relief Act of 2000 extends the duration for all Empowerment Zone through December 2009. The Rural Empowerment Zones and Enterprise Communities program (EZ/EC) provides economically depressed rural areas and communities with opportunities for growth and revitalization. USDA has designated 120 Champion communities from the EZ/EC applicant communities that have agreed to implement their strategic plans in accordance with the principles of the program and report regularly on their progress.

Need and Use of the Information: Periodic reviews provide the basis for USDA to continue or revoke a designation during the life of the federal program. These reports provide progress on each project that the designee has specified in their implementation plans. A warning letter may be sent to recipients who have been regarded as noncompliance or have made insufficient progress in implementing the strategic plan.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 178.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,762.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–9174 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Establishment of the Advisory Committee on Biotechnology and 21st Century Agriculture and Notice of Appointment of Committee Members

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice of establishment of the Advisory Committee on Biotechnology and 21st Century Agriculture and notice of appointment of committee members.

SUMMARY: The Office of the Under Secretary, Research, Education, and Economics of the Department of Agriculture, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, announces the establishment of and appointment of members to the Advisory Committee on Biotechnology and 21st Century Agriculture (''AC21'').

ADDRESSES: The public may send written comments to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone: (202) 720–3817, Fax: (202) 690–4265, or e-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The Department of Agriculture is establishing a new committee, the Advisory Committee on Biotechnology and 21st Century Agriculture. The purpose of this new committee is to examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. The committee is necessary and in the public interest.

The Committee will report to the Secretary through an annual report and other means as necessary and appropriate.

The Committee will meet in Washington, DC, up to four (4) times per year. Eighteen members were appointed from nominations of more than 100 well-qualified individuals, representing the biotechnology industry, the farming community, the seed industry, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on bioethics and legal issues. Equal opportunity practices were followed in appointing committee members. To assure that recommendations of the advisory committee take into account the needs of diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The following appointments to the Advisory Committee on Biotechnology and 21st Century Agriculture have been made:

Patricia A. Layton, Professor, Department of Forest Resources, Clemson University, in Clemson, South Carolina will serve as Chair of the AC21;

Daryl D. Buss, Dean, School of Veterinary Medicine, University of Wisconsin in Madison, Wisconsin;

Leon C. Corzine, Farmer, and Chairman, Biotechnology Working Group, National Corn Growers Association, in Assumption, Illinois;

Carole Cramer, Professor, Virginia Tech, and Chief Scientific Officer, CropTech Corporation, in Blacksburg, Virginia;

Richard T. Crowder, Chief Executive Officer, American Seed Trade Association, in Alexandria, Virginia;

Michael D. Dykes, Vice President, Government Affairs, Monsanto Company, in Washington, DC;

Juan C. Enriquez-Cabot, Director, Life Sciences Project, Harvard Business School, in Boston, Massachusetts;

Randal W. Giroux, Staff Scientist, Cargill, Inc., in Wayzata, Minnesota;

Duane Grant, Farmer and Member, National Association of Wheat Growers and U.S. Wheat Inc. Biotechnology Committee, in Rupert, Idaho;

David A. Hoisington, Director, Applied Biotechnology Center and Bioinformatics, International Maize and Wheat Improvement Center (CIMMYT), in Mexico City, Mexico;

Gregory A. Jaffe, Co-Director, Biotechnology Project, Center for Science in the Public Interest, in Washington, DC;

David C. Magnus, Assistant Professor, Center for Bioethics, University of Pennsylvania, in Philadelphia, Pennsylvania;

Terry L. Medley, Vice President, Global Regulatory Affairs, DuPont

Agriculture and Nutrition, in Wilmington, Delaware;

Margaret G. Mellon, Director, Food and Environment Program, Union of Concerned Scientists, in Washington, DC;

Ronald D. Olson, Vice President, Grain Operations, General Mills, in Minneapolis, Minnesota;

Jerome B. Slocum, Farmer and General Manager, North Mississippi Grain Company, in Coldwater, Mississippi;

Keith C. Triebwasser, Manager, Product Safety and Regulatory Affairs, The Procter and Gamble Company, in Cincinnati, Ohio;

Lisa W. Zannoni, Head, Global Regulatory Affairs and Government Relations, BASF Plant Science, in Mount Olive, New Jersey.

Committee members will initially serve one-or two-year terms, and may be reappointed to serve up to six consecutive years. In the event of a vacancy, the Secretary will appoint a new member as appropriate and subject to the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory.

Committee members will serve without pay. Reimbursement of travel expenses and per diem costs shall be made to Committee members who would be unable to attend Committee meetings without such reimbursement.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–9173 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–007–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the importation of animals and poultry, animal and poultry products, and animal germ plasm.

DATES: We will consider all comments that we receive on or before June 16, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–007–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–007–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–007–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the importation of animals and poultry, animal and poultry products, and animal germplasm, contact Dr. Gary Colgrove, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Animals and Poultry, Animal and Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Number: 0579–0040.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction of exotic animal diseases into the United States and for rapidly identifying, containing, and eradicating such diseases when feasible. In connection with this mission, APHIS collects pertinent information from those individuals who import animals or poultry, animal or poultry products, or animal germplasm into the United States.

This information includes data such as the origins of the animals or animal products to be imported, the health status of the animals or the processing methods used to produce animal products to be imported, and whether the animals or animal products were temporarily offloaded in another country during their transit to the United States. We need this information to help ensure that these imports do not introduce exotic animal diseases into the United States.

We use a variety of information collection procedures, devices, and forms including, but not limited to: Health certificates, import permits, ear tags, leg bands, specimen submission forms, inspection reports, cooperative and trust fund agreements, and certification statements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0369992 hours per response.

Respondents: Entities that import animals or poultry, animal or poultry products, and animal embryos, germplasm, and semen.

Estimated annual number of respondents: 169,806.

Estimated annual number of responses per respondent: 9.618176.

Estimated annual number of responses: 1,633,224.

Estimated total annual burden on respondents: 60,428 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of April 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9175 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Crupina Vegetation Management, Okanogan and Wenatchee National Forests, Chelan Ranger District, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On October 17, 2002, the USDA, Forest Service, Okanogan and Wenatchee National Forests, published a Notice of Intent (in **Federal Register**, 67 FR 64082) to prepare an environmental impact statement (EIS) for Crupina Vegetation Management. The current Forest Service vegetation management strategy would be more accurately reflected if this project EIS were titled ''Crupina Integrated Weed Management Project''. Therefore, this EIS is revised. Other environmental analyses activities related to past wildfires have delayed the release dates for this EIS. The revised release date for the draft EIS will be July 2003 and the final December 2003.

FOR FURTHER INFORMATION CONTACT: Jim Archambeault, Crupina Project Team Leader, Okanogan-Wenatchee National Forests; phone: (509) 997–9738 or Mallory Lenz, Wildlife Biologist, Chelan Ranger District, phone (509) 682–2576.

April 9, 2003.

Michael C. Ash,

Deputy Regional Forester, Pacific Northwest Region.

[FR Doc. 03–9140 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) approval of minutes, (3) public comment, (4) brochure for Glenn/Colusa, (5) historical library, (6) report on reimbursement of search & rescue, (7) update on absent members, (8) how to solicit projects, (9) report on Fire Safe Council, (10) general discussion, (11) next agenda.

DATES: The meeting will be held on April 28, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 25, 2003 will have the opportunity to address the committee at those sessions.

Dated: April 9, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–9127 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 1, 2003, at the Economic Development Association of Skagit County, 204 West Montgomery Street, Mt. Vernon, WA. The meeting will begin at 9 a.m. and last until approximately 3 p.m.

The purpose of the meeting will be to review, evaluate and, if time allows, recommend funding of proposed Title II projects for 2004 under the Secure Rural Schools and Community Self-Determination Act.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: April 9, 2003.

James Chu,

Acting Designated Federal Official.

[FR Doc. 03–9129 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Housing Loans.

DATES: Comments on this notice must be received by June 16, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Robert E. Keyes, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Stop 0784, 1400 Independence Ave., SW., Washington, DC 20250–0784; Telephone: (202) 720–1452; E-mail: *robert.keyes@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Housing Loans.

OMB Number: 0575–0078.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 517 (d) of Title V of the Housing Act of 1949, as amended, to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas by eligible recipients.

The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between the rate of interest paid by the borrower and the market rate of interest.

The purpose of the program is to assist low and moderate income individuals and families acquire or construct a single family residence in a rural area with loans made by private lenders. Eligibility for this program includes low and moderate income families or persons whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary.

The Guaranteed Rural Housing (GRH) program was authorized under the Cranston-Gonzalez National Affordable Housing Act, and the Agency issued a final rule implementing the GRH program on April 17, 1991, before departmental reorganization. The program began as a pilot program in 20 States on May 17, 1991. In 1992, the GRH program was offered on a nationwide basis. During the implementation process, the Agency looked for ways to improve the program and make it more user friendly.

The Agency recognized the need to make its program even more compatible with the existing structure of the mortgage lending community. On May 22, 1995, the Agency published a final rule incorporating the needed changes to encourage greater participation by lenders and the secondary market for mortgage loans.

The information requested by the Agency includes borrower financial information such as household income, assets and liabilities, and monthly expenses. All information collected is vital for the Agency to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program. Lender requirements are in compliance with OMB Circular A–129.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .48 hours per response.

Respondents: Individuals or households and business or other for-profits.

Estimated Number of Respondents: 37,456.

Estimated Number of Responses per Respondent: 6.7.

Estimated Number of Responses: 250,756.

Estimated Total Annual Burden on Respondents: 120,442 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Team Leader, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility;

(b) the accuracy of RHS's estimate of the burden of the proposed collection of information 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 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. Comments may be sent to Tracy Givelekian, Team Leader, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 24, 2003.

James E. Selmon III,

Acting Administrator, Rural Housing Service.

[FR Doc. 03–9203 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: May 8–9, 2003. On May 8, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:15 p.m. On May 9, the meeting will begin at approximately 8:30 a.m. and end at approximately 12 noon.

ADDRESSES: The meeting will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 20191.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census and the development of the American Community Survey and other related programs will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 reengineered decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: April 4, 2003.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 03–9187 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2003]

Foreign-Trade Zone 193—Pinellas County, FL, Expansion of Manufacturing Authority-Subzone 193A, Cardinal Health 409, Inc. (Gelatin Capsules/Pharmaceutical Products); Pinellas County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 193A, at the Cardinal Health 409, Inc. (formerly R.P. Scherer Corporation) facilities in the St. Petersburg/Clearwater area (Pinellas County), Florida. It was formally filed on March 27, 2003.

Subzone 193A was approved by the Board in 2000 at 4 sites (42.1 acres) in the St. Petersburg/Clearwater area (Pinellas County), with authority granted for the manufacture of soft gelatin capsules and certain pharmaceutical products (Board Order 1117, 65 FR 54196, 9/7/2000).

Subzone 193A (754 employees) is currently requesting to expand the scope of authority for manufacturing activity conducted under FTZ procedures to include the manufacture of a new anti-AIDS drug, using foreign and domestic ingredients. The foreign ingredient is classified under HTSUS 2935.00.4800 and has a 7.4% duty rate. The finished product is classified under HTSUS 3004.70.9010 and is duty-free. Cardinal will be finishing and encapsulating the finished drug under contract for a pharmaceutical company, which would then use the drug in clinical trials.

Zone procedures would exempt Cardinal from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty-free) instead of the rate otherwise applicable to the foreign input material (7.4%). The application indicates that the savings from zone procedures would help improve Cardinal's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 30, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 30, 2003).

A copy of the request will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above.

Dated: April 8, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9205 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2003]

Foreign-Trade Zone 29—Louisville, KY, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, Louisville, Kentucky, requesting authority to expand its zone at sites within the Owensboro, Kentucky-Evansville, Indiana, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 4, 2003.

FTZ 29 currently serves businesses in the Louisville Customs port of entry area. The proposed change would expand the FTZ 29 plan to also serve businesses in the Kentucky portion of the Owensboro-Evansville Customs port of entry, which currently has no existing zone sites.

FTZ 29 was approved on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77) and expanded on January 31, 1989 (Board Order 429, 54 F.R. 5992, 2/7/89); December 15, 1997 (Board Order 941, 62 FR 67044, 12/23/97); July 17, 1998 (Board Order 995, 63 FR 40878, 7/31/98); December 11, 2000 (Board Order 1133, 65 FR 79802, 12/20/00); and, January 15, 2002 (Board Order 1204, 67 FR 4391, 1/30/02). The zone project currently consists of the following sites in the Louisville, Kentucky, area: *Site 1* (1,674 acres)—1,668 acres within the Riverport Industrial complex and 6 acres at 3401 Jewell Avenue, Louisville; *Site 2* (593 acres)—located at the junction of Gene Snyder Freeway and La Grange Road, eastern Jefferson County; *Site 3* (142 acres)—United States Navy Ordnance facility, 5403 Southside Drive, Louisville; *Site 4* (2,311 acres)—consisting of the Louisville International Airport and three other airport-related parcels; *Site 5* (70 acres)—Marathon Ashland Petroleum LLC Tank Farm and pipelines, 4510 Algonquin Parkway along the Ohio River, Louisville; and *Site 6* (316 acres)—Cedar Grove Business Park, Highway 480, near Interstate 65, Bullitt County.

The applicant is now requesting authority to expand the general-purpose zone to include two new sites in Henderson and Owensboro, Kentucky: *Proposed Site 7* (273 acres)—Henderson County Riverport Authority facilities, 6200 Riverport Road, Henderson; and, *Proposed Site 8* (182 acres)—Owensboro Riverport Authority facilities, 2300 Harbor Road, Owensboro. Proposed Site 7 is owned by the Henderson County Riverport Authority and the Abbott Family Farm. Proposed Site 8 is owned by the Owensboro Riverport Authority. No specific manufacturing requests are being made at this time. Such requests

would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is June 16, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 30, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce, Export Assistance Center, Gene Snyder Courthouse Building, 601 West Broadway, Room 634B, Louisville, Kentucky 40402.

Dated: April 8 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9206 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Director of the National Institute of Standards and Technology announces that the National Construction Safety Team Federal Advisory Committee will meet on April 29–30, 2003.

DATES: The meeting will convene April 29, 2003, at 9 a.m. and will adjourn at noon on April 30, 2003. Members of the public wishing to attend the meeting must notify Steve Cauffman by c.o.b. Friday, April 25, 2003, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8610, Gaithersburg, Maryland 20899–8610, telephone number (301) 975–6051, fax (301) 975–6122, or via e-mail at *stephen.cauffman@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, April 29, 2003, from 9 a.m. to 5 p.m. and Wednesday, April 30, 2003, from 8:30 a.m. to noon at NIST headquarters in Gaithersburg, Maryland.

The Committee was established pursuant to section 11 of the National Construction Safety Team Act (15 U.S.C. 7310). The Committee is composed of eight members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. Two additional members may be appointed at a later date. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act.

The purpose of this meeting is to brief the Committee on the objectives and duties of the Committee as well as to provide an update on the two major investigations that NIST is currently conducting under the Act. The agenda will include briefings and discussions on the National Construction Safety Team Act, the World Trade Center Investigation, the Rhode Island Nightclub Fire Investigation, and National Construction Safety Team implementation.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, the WTC Investigation, the Rhode Island Nightclub Investigation, and NCST Implementation are invited to request a place on the agenda. Approximately one hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the NCST Advisory Committee. Questions from the public will not be considered during this period.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 10, 2003, that portions of the meeting of the National Construction Safety Team Advisory Committee that involve discussions regarding the proprietary information and trade secrets of third parties, data and documents that may also be used in criinal cases or lawsuits, matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action , and data collection status and the issuance of subpoenas may be closed in accordance with 5 U.S.C. 552b(c)(4), (5), (9)(B), and (10), respectively. The closed portion of the meeting is scheduled to begin at 8:30 a.m. and to end at noon on April 30, 2003. All other portions of the meeting will be open to the public. The agenda may change to accommodate Committee business. The final agenda will be posted on the Web site *(http://www.ncstadvcom.gov).*

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by c.o.b. Friday, April 25, 2003, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman, and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: April 11, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–9346 Filed 4–11–03; 2:36 p.m.]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,400,422 entitled ''Technique to Prepare High-Reflectance Optical Fiber Bragg Gratings with Single Exposure In-Line or Fiber Draw Tower'', Navy Case No. 74,431.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: April 8, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–9130 Filed 4–14–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,612 entitled ''Tunable, ELINT Receiver''.

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: April 8, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–9132 Filed 4–14–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Second Sight, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Second Sight, LLC, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described below:

U.S. Patent No. 5,264,722 (Navy Case No. 74,224) issued November 23, 1993, entitled ''Nanochannel Glass Matrix Used in Making Mesoscopic Structures''; U.S. Patent No. 6,185,961 (Navy Case No. 78,923) issued February 13, 2001, entitled ''Nanopost Arrays and Process for Making Same''; U.S. Patent No. 6,393,327 (Navy Case No. 82,449) issued May 21, 2002, entitled ''Microelectronic Stimulator Array''; U.S. Patent Application Serial No. 10/061,413 (Navy Case No. 83,682; divisional of U.S. Patent No. 6,393,327) filed February 4, 2002, entitled ''Microelectronic Stimulator Array''; U.S. Patent Application Serial No. 10/123,406 (Navy Case No. 83,839; divisional of U.S. Patent No. 6,393,327) filed April 17, 2002, entitled ''A Permanent Retinal Implant Device''; and Navy Case No. 83,713 disclosed February 22, 2002, entitled ''Fabrication of Microelectrode Array Having High Aspect Ratio Microwires''. The proposed field of use may be limited to retinal implants for improved vision.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 30, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: April 8, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–9131 Filed 4–14–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 15, 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 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: April 9, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Indian Education Discretionary Grant Applications.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,840.

Abstract: Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2198. 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 Katrina Ingalls at (703) 620–3655 or via her e-mail address *Katrina Ingalls@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. 03–9122 Filed 4–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41779 entitled Underground Gas Storage Technology Consortium. The DOE Gas Storage Program supports the Strategic Center for Natural Gas' 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from increased use of natural gas. A solicitation for this program is included in the current NETL procurement plan for release in FY 2003. The general purpose of the Natural Gas Storage Program is to develop advanced technologies to enhance operational flexibility and deliverability of the nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions.

The purpose of this solicitation is to select an organization qualified to establish, solicit membership, and operate an Underground Gas Storage Technology Consortium that will foster broad industry interest and support for the development of cost-effective technologies to increase both the deliverability and injectability of the natural gas storage system, including conventional underground depleted oil and gas reservoirs, aquifer storage reservoirs, and salt cavern storage. Storage wells/fields often suffer a decline in productivity after several years of production and injection cycling. Current revitalization techniques usually provide only limited, temporary delivery restoration. Research supported by the consortium will focus on technologies to limit and remediate the progressive damage caused by the repeated injection and withdrawal of gas in existing and future facilities, as well as innovative reservoir development and management techniques that can maximize performance. It is anticipated that the Underground Gas Storage Technology Consortium will be gas storage industry driven and will emphasize the creation of a balanced research portfolio of practical solutions, short-term projects, and basic research to improve the performance of the Nation's gas storage infrastructure.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about April 4, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Peter E. Grandillo, Contract Specialist, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *Peter.Grandillo@NETL.DOE.GOV,* Telephone Number: (412) 386–4997.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select for award a single applicant to establish an Underground Gas Storage Technology Consortium to conduct deliverability enhancement and innovative reservoir development and management research. DOE anticipates that there will be broad participation from industry, academia, small business, and research and development organizations in the consortium.

The agreement to establish and operate the consortium is expected to last 4½ years. The first budget period will be 18 months to allow creation of the consortium structure, solicit membership and establish an executive panel of industry experts, refine a technical approach for deliverability enhancement and reservoir management research, and select and award the first round of research projects. The initial

18-month budget period will be followed by 3 one-year budget periods. Depending on the structure and membership requirements for the consortium, special provisions may have to be made for smaller companies and academia participants. The executive panel of experts established from the membership of the consortium and DOE shall rate and prioritize potential projects. This panel must be impartial and must rotate membership on a predetermined schedule. Some panel members can be from academia, however, the makeup of the panel should be such that industry is the driver.

DOE will maintain final authority in consortium project selection. No more than 10% of DOE funding provided to the consortium may be used for operating the consortium. However, any monetary requirements for membership will be maintained by the applicant for consortium operations. The consortium should select projects on an annual basis and no project should last more than two years without competing for additional funds.

A cost-sharing cooperative agreement award is anticipated that will include substantial involvement between the DOE and the Recipient, including involvement in the technical and business management aspects of the consortium, and sharing of the responsibility for the technical direction of the consortium. The DOE will participate in establishing and approving a work plan, which will identify essential and significant milestones necessary for effective implementation of the deliverability enhancement and reservoir management goals of the consortium. This work plan will be used to determine whether or not to proceed with subsequent budget periods.

This particular program is covered by section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. The proposed calculation of the anticipated cost-sharing as a percentage of award value for projects funded through the Gas Storage Consortium is 30%. It is anticipated that $3,000,000 in federal funding will be available. However, not all of the necessary funds are currently available for this solicitation. The Government's obligation under any cooperative agreement awarded is contingent upon the availability of future appropriations.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS; no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on April 4, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–9202 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy, (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, May 1, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation and update on draft Long-Term Stewardship Strategy for Rocky Flats.
2. Follow-up discussion on Building 776 demolition strategy and revision to Decommissioning Operations Plan.
3. Draft letter of recommendation regarding deer organ testing.
4. Discussion about future of the Board and its Wildlife Refuge Technical Review Group.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday—Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on April 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–9200 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of

Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by May 15, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–871 A/I, ''Commercial Building Energy Consumption Survey''
2. Energy Information Administration
3. OMB Number 1905–0145
4. Reinstatement, with change, of a previously approved collection for which approval has expired.
5. Voluntary (buildings) Mandatory (energy suppliers)
6. The EIA–871 A/I is used to collect data on energy consumption by commercial buildings and the characteristics of these buildings. The surveys fulfill planning, analyses and decision-making needs of DOE, other Federal agencies, State governments, and the private sector. Respondents are owners/managers of selected commercial buildings and their energy suppliers.
7. Business or other for-profit.
8. 2,666 hours (1.27 hours per response × .33 response per year × 6300 respondents).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, April 9, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–9201 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1259–001, et al.]

Louisiana Generating LLC, et al.; Electric Rate and Corporate Filings

April 7, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Louisiana Generating LLC

[Docket No. ER00–1259–001]

Take notice that on April 1, 2003, Louisiana Generating LLC tendered for filing its triennial review in compliance with the Commission's Order in AmerGen Vermont LLC, Docket No. ER00–1030–000, 90 ¶ 61,307.

Comment Date: April 22, 2003.

2. Wisconsin Power & Light Company

[Docket No. ER02–977–002]

Take notice that on April 1, 2003, Wisconsin Power & Light Company tendered for filing a Refund Report in response to the Commission's Order dated January 16, 2003 in Docket No. ER02–977–000.

Wisconsin Power & Light Company states that a copy of this filing has been served upon the service list, including designated representatives of all affected customers, and the Public Service Commission of Wisconsin.

Comment Date: April 22, 2003.

3. ISO New England Inc.

[Docket No. ER02–2153–003]

Take notice that on April 1, 2003, ISO New England Inc. (ISO) submitted a compliance report in this proceeding.

ISO states that copies of said filing have been served upon all parties to this proceeding and the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: April 22, 2003.

4. Cleco Power LLC

[Docket No. ER03–685–000]

Take notice that on April 1, 2003, Cleco Power LLC tendered for filing a First Revised Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1. Cleco Power LLC states that the revisions reflect an assignment of customer obligations from Cleco Midstream Resources LLC to Columbian Chemicals Company as provided for in Section 12.2 of the Original Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1.

Comment Date: April 22, 2003.

5. Duquesne Light Company

[Docket No. ER03–686–000]

Take notice that on April 1, 2003, Duquesne Light Company (DLC) filed a Service Agreement with Rainbow Energy Marketing Corporation under DLC's Open Access Transmission Tariff (Tariff). DLC states that the Service Agreement adds Rainbow Energy Marketing Corporation as a customer under the Tariff. DLC requests an effective date of April 1, 2003 for the Service Agreement.

Comment Date: April 22, 2003.

6. PacifiCorp

[Docket No. ER03–687–000]

Take notice that on April 1, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Long Term Service Agreement No. 37 under PacifiCorp's FERC Electric Tariff Third Revised Volume Number 12 as amended by letter agreement dated March 7, 2003.

PacificCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, Washington Utilities and Transportation Commission, Wyoming Public Service Commission, Bonneville Power Administration and Eugene Water & Electric Board.

Comment Date: April 22, 2003.

7. WPS Canada Generation, Inc.

[Docket No. ER03–689–000]

Take notice that on April 1, 2003, WPS Canada Generation, Inc. (WPS Canada), filed rate schedules for its Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power Service) in order to obtain compensation for the Reactive Power Service that it provides to Maine Public Service Company (MPS) and the Northern Maine Independent System Administrator, Inc. to maintain the reliability of the MPS transmission system.

WPS Canada states that copies of the filing were served upon Maine Public Service Company, the Northern Maine Independent System Administrator, Inc., the Houlton Water Company, Eastern Maine Electric Cooperative, and Van Buren Light and Power District.

Comment Date: April 22, 2003.

8. Minnesota Power

[Docket No. ER03–691–000]

Take notice that on April 1, 2003, Minnesota Power tendered for filing an executed letter agreement dated February 26, 2003 amending and updating the pricing terms and conditions of the Network Integration Transmission Service Agreement between Minnesota Power and Great River Energy (GRE) under Minnesota Power's open access transmission tariff (OATT), Service Agreement No. 65 Transmission under FERC Electric Tariff, First Revised Volume No. 6, effective March 1, 2003.

Comment Date: April 22, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''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. 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. 03–9233 Filed 4–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0013; FRL–7300–5]

Request for Contractor Access to TSCA Confidential Business Information; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Request for Contractor Access to TSCA Confidential Business Information (EPA ICR No. 1250.07, OMB Control No. 2070–0075). This ICR involves a collection activity that is currently approved and scheduled to expire on February 29, 2004. The information collection involves company and individual employee information provided by EPA contractor companies for those employees needing Toxic Substances Control Act (TSCA) confidential business information (CBI) clearance in order to perform their duties. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0013, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Sandra Wilkins, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8952; fax number: (202) 564–8955; e-mail address: *wilkins.sandra@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company under contract to EPA to provide certain services, and your employees must have access to TSCA CBI in the performance of their duties. Potentially affected entities may include, but are not limited to:

- Information services (NAICS 514), e.g., Information search services.
- Administrative and support services (NAICS 561), *e.g.,* Office administrative services.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0013. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0013. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0013. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Request for Contractor Access to TSCA Confidential Business Information.

ICR numbers: EPA ICR No. 1250.07, OMB Control No. 2070–0075.

ICR status: This ICR is currently scheduled to expire on February 29, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Certain employees of companies working under contract to EPA require access to CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance. This includes primarily the name, Social Security number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

III. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 1.6 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 19.

Estimated total number of potential respondents: Unknown.

Frequency of response: One time only per individual employee needing TSCA CBI clearance.

Estimated total/average number of responses for each respondent: 14.

Estimated total annual burden hours: 428 hours.

Estimated total annual burden costs: $15,736.

IV. Are There Changes in the Estimates From the Last Approval?

There is a decrease of 247 hours (from 675 hours to 428 hours) in the total estimated respondent burden compared with that identified in the ICR most recently approved by OMB. This change results from a lesser number of contractor companies with employees needing TSCA CBI clearance.

V. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as

appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 1, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9211 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–2]

Compliance Assistance Centers; Request for Suggestions on Candidates for Compliance Assistance Center Development in FY 2004

AGENCY: Environmental Protection Agency.

ACTION: Solicitation for suggestions.

SUMMARY: In partnership with industry, academic institutions, environmental groups, and other agencies, the Environmental Protection Agency (EPA) supports thirteen Compliance Assistance Centers (Centers) to help small- and medium-size businesses and local governments better understand and comply with environmental regulations. These Centers provide easy to understand compliance information targeted to specific sectors, geographic and environmental topics: agriculture; automotive service and repair; automotive recycling, chemical manufacturers; construction; federal facilities; local governments, metal finishing; paints and coatings; printed wiring board manufacturers; printers; transportation; and the U.S. / Mexican border environmental issues. All Centers can be accessed at *http://www.assistancecneters.net.*

EPA would like to expand the Center program to support other sectors, geographical areas or topical issues.

To support new Center development, EPA has funded the National Center for Manufacturing Sciences (NCMS) to develop, operate and maintain the Compliance Assistance Center Platform (Platform) from which new Centers can be ''launched.'' The Platform includes a suite of comprehensive web-based tools necessary to create a full-featured Center. States, industry, and compliance assistance providers can work with NCMS to establish Centers that will help the regulated community better understand and more efficiently comply with environmental requirements. The Centers for the construction sector, automotive recycling sector and U.S. / Mexican border environmental issues have been developed in partnership with NCMS and the Platform. Visit *http://www.envcap.org* to access Platform resources.

EPA is exploring new sector, geographical, or topical candidates for Center development in FY 2004. Center candidates will be evaluated initially against the following criteria: impact on health and the environment; patterns of noncompliance; assessment that compliance assistance is an appropriate ''tool'' to use; predominately involves or affects small businesses; the problem or issue is prevalent nationally; impact of new environmental regulations; subject to multiple environmental statutes/regulations; and not currently supported by an existing compliance assistance program. Once these threshold criteria have been met, an additional criteria will be applied: willingness of a sector or third-party organization to partner with EPA.

EPA invites feedback from interested parties on candidates for Center development. The above criteria should be considered in your evaluation of sector, geographic, or topical candidates. EPA anticipates selecting the sectors, topics or geographic areas for which new Centers will be developed in July, 2003. Pursuant to EPA's Grants Competition Policy that went into effect October 1, 2002, EPA will compete any assistance agreement that will be provided to support new Center development in FY 2004.

Interested parties should communicate their suggestions regarding new sectors, geographical areas or topical issues for Center development to EPA by letter or e-mail to the contact listed below.

DATES: Contact by May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Tracy Back, Team Leader, Compliance Assistance Centers, US, EPA (mail code 2224A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, E-mail: *back.tracy@epa.gov.* Telephone: 202–564–7076, Fax: 202–564–0009.

Dated: April 3, 2003.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. 03–9209 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2604]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 9, 2003.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by April 30, 2003. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of the Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

Number of Petitions Filed: 1.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9118 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Securities of Insured Nonmember Banks, (2) Fair Housing Lending

Monitoring System, (3) Public Disclosure by Banks; and (4) Procedures for Monitoring Bank Protection Act Compliance.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [Internet address: *comments@fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Securities of Insured Nonmember Banks.
OMB Number: 3064–0030.
Form Number: F–7, F–8, and F–8A.
Frequency of Response: Annually.
Affected Public: Officers, directors and shareholders from FDIC-supervised banks.
Estimated Number of Respondents: 1,755.
Number of Responses per Respondent: 1.35.
Estimated Time per Response: 0.62 hours.
Total Annual Burden: 1,470 hours.
General Description of Collection: The information is collected from FDIC-supervised banks and from officers, directors and shareholders subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The information is considered necessary for actual and potential investors making investment decisions concerning securities issued by reporting banks.

2. *Title:* Fair Housing Lending Monitoring System.
OMB Number: 3064–0046.
Frequency of Response: Annually.
Affected Public: Insured state nonmember banks.
Estimated Number of Respondents: 2,000.
Estimated Annual Number of Loan Applications: 1,000,000.
Estimated Time per Response: 5 minutes.
Total Annual Burden: 83,333 hours.
General Description of Collection: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

3. *Title:* Public Disclosure by Banks.
OMB Number: 3064–0090.
Frequency of Response: Annually.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,500.
Estimated Time per Response: 0.5 hours.
Total Annual Burden: 2,750 hours.
General Description of Collection: 12 CFR 350 requires a bank to notify the general public, and in some instances, shareholders, that disclosure statements are available upon request. Required disclosures consist of financial reports for the current and preceding year which can be copied directly from the year-end Call Report.

4. *Title:* Procedures for Monitoring Bank Protection Act Compliance.
OMB Number: 3064–0095.
Frequency of Response: Annually.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,500.
Estimated Time per Response: ½ hour.
Total Annual Burden: 2,750 hours.
General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the 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 the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 9th day of April, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–9207 Filed 4–14–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011642–006.
Title: East Coast United States/East Coast South America Vessel Sharing Agreement.
Parties: A.P. Moller-Maersk Sealand, Alianca Navegacao e Logistica Ltda, Companhia Libra de Navegacao, Compania Sud-Americana de Vapores, S.A., Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG, Oceanica AGW Com. e Rep. Ltda, P&O Nedlloyd B.V., P&O Nedlloyd Limited, Safmarine Container Lines NV.
Synopsis: The amendment provides for an additional vessel string and revises the space allocations under the agreement. The parties requested expedited review.

Agreement No.: 011814–001.
Title: CAT/King Ocean Space Charter Agreement.
Parties: King Ocean Services Limited, King Ocean Service de Venezuela, S.A., Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG d/b/a Crowley American Transport.
Synopsis: The amendment adds the Dominican Republic to the geographic scope of the agreement and allows Hamburg-Süd to sub-charter space to Maersk Sealand under a separate agreement.

Agreement No.: 011841–001.

Title: Lykes/Libra Slot Charter Agreement.

Parties: Companhia Libra de Navegacao, Lykes Lines Limited, LLC.

Synopsis: The subject agreement modification deletes from Article 5.1(a)(ii) the restrictions on the use of space by Libra to move cargo to/from ports in the Dominican Republic and Venezuela. Consequently, these countries are being added to the geographic scope. The modification also clarifies that the agreement is intended to cover the trade between the U.S. and Mexico. The parties request expedited review.

Agreement No.: 011849.

Title: CAT/Maersk Sealand Space Charter Agreement.

Parties: Hamburg-Süd d/b/a Crowley American Transport, A.P. Moller Maersk Sealand.

Synopsis: The agreement authorizes Hamburg-Süd to charter space to Maersk Sealand in the trade between Atlantic Coast ports of Florida and ports in Aruba, Bonaire, Curacao, the Dominican Republic, Colombia, and Venezuela.

Agreement No.: 201101–003.

Title: Tampa/Tampa Bay Wharfage Incentive Terminal Agreement.

Parties: Tampa Port Authority, Tampa Bay International Terminals.

Synopsis: This amendment revises the wharfage incentives provided under the agreement.

By Order of the Federal Maritime Commission.

Dated: April 10, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–9214 Filed 4–14–03; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0228]

Office of Civil Rights; Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Civil Rights, GSA.

ACTION: Notice of reinstatement and request for public comments of OMB clearance number 3090–0228.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection regarding nondiscrimination in Federal financial assistance programs. A request for public comments was published at 67 FR 78806, December 26, 2002. No comments were received. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: K. Evelyn Britton, Office of Civil Rights, (202) 501–4347.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0228.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Total Responses: 500.
Hours Per Response: 2.
Total Burden Hours: 1000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC, 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: April 7, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–9107 Filed 4–14–03; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Republication of a System of Records Notice

AGENCY: General Services Administration.

ACTION: Notice of an updated system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is updating and republishing a notice for the existing system of records, Personnel Information Resources System (PIRS), GSA/PPFM–8, which is being renamed the Comprehensive Human Resources Integrated System (CHRIS) and updated to reflect organizational and address changes and upgraded automated processes. The revisions are minor in nature and do not meet the criteria of the Office of Management and Budget (OMB) for a revised system of records requiring an advance period for public comment as described in OMB Circular A–130, Appendix 1.

DATES: The notice is effective April 15, 2003.

FOR FURTHER INFORMATION CONTACT: The GSA Privacy Act Officer. *Telephone:* (202) 501–1452. Address: Office of the Chief People Officer (C), General Services Administration, 1800 F Street NW., Washington DC 20405.

Dated: April 2, 2003.

Daniel K. Cooper,

Director, Information, Management Division.

GSA/PPFM–8

SYSTEM NAME:

Comprehensive Human Resources Integrated System (CHRIS).

SYSTEM LOCATION:

The record system is located on a web-based application used by GSA Services and Staff Offices, commissions, and small agencies serviced by GSA, at the addresses below:

- GSA Central Office, 1800 F Street NW, Washington DC 20405.
- National Capital Region, 7th & D Streets SW, Washington, DC 20407.
- New England Region, 10 Causeway Street, Boston MA 02222.
- Northeast and Caribbean Region, 26 Federal Plaza, New York NY 10278.
- Mid-Atlantic Region, 20 N. Eighth Street, Philadelphia PA 19107.
- Southeast Sunbelt Region, 401 West Peachtree Street, Atlanta GA 30365.
- Great Lakes Region, 230 South Dearborn Street, Chicago IL 60604.
- The Heartland Region, 1500 East Bannister Road, Kansas City MO 64131.
- Greater Southwest Region, 819 Taylor Street, Fort Worth TX 76102.
- Pacific Rim Region, 450 Golden Gate Avenue, San Francisco CA 95102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of GSA and of commissions, committees, and small agencies serviced by GSA, including persons in intern, youth employment, and work-study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel records. The records include information collected by operating officials and personnel officials administering programs for or about employees. The system has data needed to update the Central Personnel Data File (CPDF) at the Office of Personnel Management (OPM) and to process and document personnel actions. It may include, but is not limited to, the data maintained in each employee's Official Personnel Folder, including:

a. Employee's name, Social Security Number, date of birth, gender, work schedule, type of appointment, education, veteran's preference, military service, and race or national origin.

b. Employee's service computation date for leave, date probationary period began, and date of performance rating.

c. Pay data such as pay plan, occupational series, grade, step, salary, and organizational location.

d. Performance rating and types and amounts of awards.

e. Position description number, special employment program, and target occupational series and grade.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C., pt. III, is the authority for maintaining personnel information. Authorities for recording Social Security Numbers are E.O. 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

PURPOSE(S):

To maintain a computer-based information system supporting the day-to-day operating needs of human resources operations and management. The system is designed to meet information and statistical needs of all types of Government organizations and provides a number of outputs.

For the Office of the Chief People Officer, the system produces personnel actions, organization rosters, retention registers, retirement calculations, reports of Federal civilian employment, employee master record printouts, length-of-service lists, award lists, etc. It also provides reports for monitoring personnel actions to determine the impact of GSA policies and practices on minorities, women, and disabled persons and analyzing their status in the work force; and for establishing affirmative action goals and timetables.

The system also provides management data for administrative and staff offices.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the system is used by GSA associates in the performance of their official duties as authorized by law and regulation and for the following routine uses:

a. To disclose information to the Office of Personnel Management (OPM) for the Central Personnel Data File (CPDF).

b. To disclose information to sources outside GSA including other agencies and persons for employees seeking employment elsewhere; and for documenting adverse actions, conducting counseling sessions, and preparing biographical sketches on employees for release to other agencies and persons.

c. To disclose information in the personnel file to GSA's Office of the Chief People Officer.

d. To disclose information to agency staff and administrative offices who may restructure the data for management purposes.

e. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee, issuing a security clearance, reporting an employee investigation, clarifying a job, letting a contract, or issuing a license, grant, or other benefit by the requesting agency where the information is needed for a decision.

g. To disclose information to a congressional office in response to a request from the person who is the subject of the record.

h. To disclose information to the Office of Management and Budget for reviewing private relief legislation during the clearance process.

i. To disclose information to OPM under the agency's responsibility for evaluating Federal personnel management.

j. To disclose information under the routine uses listed in the OPM record system OPM/GOVT–1. When official personnel records in the custody of GSA are covered in a system of records published by OPM as Governmentwide records, they are considered part of that system. Other official personnel records covered by notices published by GSA are considered separate systems of records and may be transferred to OPM under official personnel programs and activities as a routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer records are stored in a secure server and accessed over the web using encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms.

RETRIEVABILITY:

Records are retrieved by name or by Social Security Number.

SAFEGUARDS:

Computer records are protected by a password system. Paper output is stored in locked metal containers or in secured rooms when not in use. Information is released to authorized officials based on their need to know.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

CHRIS Program Manager (CID), Office of the Chief Information Officer, Office of the Chief People Officer, General Services Administration, 1800 F Street NW., Washington DC 20405.

NOTIFICATION PROCEDURE:

Address inquiries to: Director of Human Resources (CP), Office of the Chief People Officer, General Services Administration, 1800 F Street NW., Washington DC 20405; or, for regional personnel records, to the regional Human Resources Officer at the addresses listed above under System Location.

RECORDS ACCESS PROCEDURES:

Address requests to view or copy a record to one of the officials listed in the notification procedure above. For written requests, provide full name, Social Security Number, address, telephone number, and approximate date and place of employment.

CONTESTING RECORD PROCEDURES:

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for the system information are the individuals themselves, other employees, supervisors, management officials, officials of other agencies, and record systems GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

[FR Doc. 03–9141 Filed 4–14–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–NEW–SCHIP]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Survey of SCHIP State Administrators.

Form/OMB No.: OS–0990–NEW–SCHIP.

Use: The Survey of SCHIP Administrators will provide information about the broader context in which state programs operate, including the political and social context, policy discussions, lessons learned, and key issues facing the program in the next one or two years. This survey will complement our case studies of 10 states.

Frequency: One Time.

Affected Public: State, Local or Tribal Governments.

Annual Number of Respondents: 56.

Total Annual Responses: 56.

Average Burden Per Response: 59 minutes.

Total Annual Hours: 3,320.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, *Attention:* Allison Eydt (OMB #0990–NEW–SCHIP), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 7, 2003.

John P. Burke III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–9113 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0238]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Patient Follow-up Survey for the Multi-Site Evaluation of the Welfare-to-Work Grant Program.

Form/OMB No.: OS–0990–0238.

Use: This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of Welfare-to-Work formula and competitive grantees and provide information on implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-Work grants program.

Frequency: On occasion.

Affected Public: Individuals, State, Local or Tribal Governments, Non-profit Insitutions.

Annual Number of Respondents: 4,164.

Total Annual Responses: 4,164.

Average Burden Per Response: 27 minutes.

Total Annual Hours: 1,879.

2. *Type of Information Collection Request:* New Collection.

Title of Information Collection: National Community Centers of Excellence (CCOE) in Women's Health Evaluation: Survey for CCOE Center Directors, Program Coordinators, and Patients.

Form/OMB No.: OS–0990–OWH–NEW.

Use: This survey will assess the ability of community-based organizations to provide comprehensive, integrated, holistic care to underserved women employing a network of community partners and to assess patient satisfaction with the care received. Results will be used to determine if the CCOE program will be continued and if so, with what modifications. The effort employs four collection instruments, which include; (1) CCOE Center Director and Program Coordinator Survey, (2) CCOE Community Partner Survey, (3) CCOE Patient Survey, and (4) CCOE Site Visit. The numbers referenced below are in aggregate. See the associated supporting statement for individualized burden calculations.

Frequency: One-time.

Affected Public: Individuals and households, Businesses or other for-profit, not-for-profit institutions.

Annual Number of Respondents: 6,210.

Total Annual Responses: 6,210.

Average Burden per Response: 17 minutes.

Total Annual Hours: 1,711.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: John Burke (0990–0238), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: April 7, 2003.

John P. Burke III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–9114 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: May 22–23, 2003 (Open from 8 a.m. to 8:15 a.m. on May 22 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: June 5–6, 2003 (Open from 8 a.m. to 8:15 a.m. on June 5 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Systems Research.

Date: June 12–13, 2003 (Open from 8 a.m. to 8:15 a.m. on June 12 and closed for remainder of the meeting).

Place: Doubletree Hotel 1750 Rockville Pike, Conference Room, TDB, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: June 16–17, 2003 (Open from 8 a.m. to 8:15 a.m. on June 16 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: June 19–20, 2003 (Open from 8 a.m. to 8:15 a.m. on June 19 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 3, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–9112 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Advisory Committee to the Director, National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, NCEH.

Times and Dates: 1:30 p.m.–5 p.m., May 8, 2003.

8:30 a.m.–3:30 p.m., May 9, 2003.

Place: Centers for Disease Control and Prevention, Chamblee Campus, 4770 Buford Highway NE., Building 102, Room 2201, Atlanta, GA 30341. In the interest of security, CDC has instituted stringent procedures for entrance onto the Chamblee Campus by non government employees. Persons without government identification will need to show a photo ID, sign in with Security, and be escorted to Building 102.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 70 people.

Purpose: The Secretary, and by delegation, the Director of the Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research,

investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work.

Matters to be Discussed: The agenda items for the meeting will include, but are not limited to, an update and discussions on Healthy People 2010 and presentations from NCEH regarding current activities. Agenda items are tentative and subject to change.

For Further Information Contact: Individuals interested in attending the meeting should contact Kent Taylor, designated federal official, CDC, 4770 Buford Highway NE., MS F–29, Atlanta, Georgia 30341–3724; telephone 770–488–7020, fax 770–488–7024; e-mail: *ktaylor@cdc.gov.* The deadline for notification of attendance is May 1, 2003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9133 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 3 p.m.–5 p.m., May 1, 2003.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

Background: The Advisory Board on Radiation and Worker

Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a Final Rule, providing advice on methods of dose reconstruction which have also been promulgated as a Final Rule, evaluating the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and providing advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of members to the Board to ensure a balanced representation on the Board. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This board is charged with a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on the continuation of discussion regarding the Special Exposure Cohort Notice of Proposed Rule Making finalization of recommendations.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled for 3 p.m. Eastern Time. To access the teleconference you must dial 1–800–713–1971. To be automatically connected to the call, you will need to provide the operator with the participant code 373956 and you will be connected to the call.

Contact Person For More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9135 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health: Meeting

The National Institute for Occupational Safety and Health: (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Priorities, strategies and methods for long-term health monitoring of World Trade Center exposed rescue, recovery and restoration workers and volunteers.

Time and Date: 9:30 a.m.–4:30 p.m., May 2, 2003.

Place: New York Academy of Medicine, 1216 Fifth Avenue (corner of 103rd St.), NY, NY 10029, (212) 822–7200. Directions are available at *http://www.nyam.org/directions.shtml.*

Status: Open to the public, limited only by space available. Seating will be limited to approximately 75 people. Due to limited conference space, notification of intent to attend the meeting must be made with Ms. Lou Bagley at (513) 841–4336 or e-mail *lbagley@cdc.gov.* Requests to attend will be accommodated on a first come basis.

Purpose: To request public assistance in identifying the needs, issues, and priorities for providing long-term medical monitoring to emergency response personnel who responded to the September 11, 2001, terrorist attacks at the World Trade Center, and personnel who participated in the recovery and restoration efforts at the World Trade Center site or at the Staten Island Landfill.

Public Law 108–7 directs the Federal Emergency Management Agency (FEMA), now part of Emergency Preparedness and Response Directorate, Department of Homeland Security, to make available $90 million from funds appropriated to FEMA in Public Law 107–117 to administer baseline and follow-up screening, clinical examinations, long-term health monitoring and analysis for emergency services, rescue and recovery personnel who responded to the terrorist attacks in New York City. For such services, Public Law 108–7 further directs FEMA to make available not less than $25 million from this amount for current and retired New York City firefighters. FEMA will be providing the $90 million in appropriated funds to NIOSH to oversee the development and funding of this long-term medical monitoring program. NIOSH now is requesting input from the public in determining priorities for use of these funds.

Contact Persons for Additional Information: Sherry Baron, MD, MPH, NIOSH, CDC, 4676 Columbia Parkway, M/S R10, Cincinnati, OH 45226–1998, telephone (513) 458–7159, fax (513) 458–7105, e-mail *SBaron@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9134 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10087, CMS–2384, CMS–10006]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of the Illinois and Wisconsin State Pharmacy Assistance Waivers; *Form No.:* CMS–10087 (OMB# 0938–NEW); *Use:* CMS has implemented the Pharmacy Plus Initiative to grant waivers to states to provide pharmacy benefits to low-income elders with incomes too high to qualify for Medicaid. This study will evaluate the Pharmacy Plus programs initiated in the states of Illinois and Wisconsin using a variety of methods including a descriptive program evaluation, survey of participants, analyses of drug utilization and costs as well as the cost impact to the Medicare and Medicaid programs; *Frequency:* Other: one-time only; *Affected Public:* Individuals or Households; *Number of Respondents:* 2,200; *Total Annual Responses:* 2,200; *Total Annual Hours:* 550.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Third Party Premium Billing Request; *Form No.:* CMS–2384; *Use:* The Third Party Premium Billing Request is used as an authorization to designate that a family member or other interested party receive the Medicare Premium Bill and pay it on behalf of a Medicare beneficiary. *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 15,000; *Total Annual Hours:* 6,250.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* TWWIIA Demonstration to Maintain Independence; *Form No.:* CMS–10006 (OMB# 0938–0799); *Use:* Section 204 of the Ticket to Work and Work Incentives Act provides for the establishment of grants for states that develop and implement demonstration programs designed to support working people with physical or mental impairments that without medical assistance will result in disability. State agencies will be applying for these grants; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 5,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 3, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9115 Filed 4–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–289]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Lifestyle Modification Program Demonstration and Addendum; *Form No.:* CMS–R–0289 (OMB# 0938–0777); *Use:* This demonstration will focus on Medicare sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the progression of cardiovascular disease

(CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration will test the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries.; *Frequency:* On occasion, Weekly, Monthly, Quarterly; *Affected Public:* Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 44; *Total Annual Responses:* 17,996; *Total Annual Hours:* 2,999.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 3, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9116 Filed 4–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 2004

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of fiscal year 2004 federal allotments to state developmental disabilities councils and protection and advocacy formula grant programs.

SUMMARY: This notice sets forth Fiscal Year (FY) 2004 individual allotments and percentages of the total appropriation to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to section 122 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the FY 2004 President's Budget request and are contingent on congressional appropriations for FY 2004. If the Congress enacts a different appropriation amount in FY 2004 or if a revised state allocation formula is adopted by the Congress, these allotments will be adjusted accordingly. The State allotments are available on the ADD homepage on the Internet: *http://www.acf.hhs.gov/programs/add/.*

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Wade, Grants Fiscal Management Specialist, Office of Grants Management, Administration for Children and Families, telephone (202) 401–5798.

SUPPLEMENTARY INFORMATION: Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. The Catalog of Federal Domestic Assistance (CFDA) number is 93.630. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2004 allotments for both of the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the ''Annual Statistical Supplement, 2001, to the Social Security Bulletin'' issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table B—Per Capita Personal Income, 1999–2001 of the ''Survey of Current Business,'' October, 2002, issued by the Bureau of Economic Analysis, U.S. Department of Commerce. The most recent comparable data for the Territories were obtained from the Department of Commerce September 2002; and

C. State data on Total Population is based on ''State Population Estimates: July 1, 2001'' issued December 2002 by the Bureau of the Census, U.S. Department of Commerce. The Working Population (ages 18–64) is based on 2000 Census from the ''Estimate of Resident Population of the U.S. by Selected Age Groups and Sex,'' issued by the Bureau of the Census. Total population estimates for the Territories are also based on 2000 Census data issued by the Bureau of Census. The Territories working population was issued in the Bureau of Census report, ''General Characteristics Report: 1980,'' which is the most recent data available from the Bureau.

TABLE 1.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Developmental disabilities councils	Percentage of total appropriation
Total	$69,800,000	100.000000
Alabama	1,269,365	1.818574
Alaska	450,000	.644699
Arizona	1,164,570	1.668438
Arkansas	785,444	1.125278
California	6,453,984	9.246401
Colorado	764,825	1.095738
Connecticut	631,308	0.904453
Delaware	450,000	.644699
District of Columbia	450,000	.644699
Florida	3,514,537	5.035153
Georgia	1,885,776	2.701685
Hawaii	450,000	.644699
Idaho	450,000	.644699
Illinois	2,598,821	3.723239
Indiana	1,472,042	2.108943
Iowa	729,871	1.045660
Kansas	604,303	.865764
Kentucky	1,170,815	1.677385
Louisiana	1,309,806	1.876513
Maine	463,067	.663420
Maryland	1,008,412	1.444716
Massachusetts	1,259,134	1.803917
Michigan	2,405,577	3.446385
Minnesota	1,016,504	1.456309
Mississippi	918,258	1.315556
Missouri	1,346,924	1.929691
Montana	450,000	.644699
Nebraska	450,000	.644699
Nevada	462,394	.662456
New Hampshire	450,000	.644699
New Jersey	1,547,765	2.217428
New Mexico	506.975	.726325
New York	3,962,119	5.676388
North Carolina	1,972,944	2.826567
North Dakota	450,000	.644699
Ohio	2,768,220	3.965931
Oklahoma	883,007	1.265053
Oregon	749,553	1.073858
Pennsylvania	2,924.521	4.189858
Rhode Island	450,000	.644699
South Carolina	1,110,474	1.590937
South Dakota	450,000	.644699
Tennessee	1,475,993	2.114603
Texas	4,516,842	6.471120
Utah	570,329	.817090

TABLE 1.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Developmental disabilities councils	Percentage of total appropriation
Vermont	450,000	.644699
Virginia	1,496,132	2.143456
Washington	1,146,785	1.642958
West Virginia	646,191	.925775
Wisconsin	1,271,345	1.821411
Wyoming	450,000	.644699
American Samoa	234,348	.335742
Guam	234,348	.335742
Northern Mariana Islands	234,348	.335742
Puerto Rico	2,227,676	3.191513
Virgin Islands	234,348	.335742

TABLE 2.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection & advocacy	Percentage of total appropriation
Total	[1] $34,300,000	100.000000
Alabama	565,733	1.649367
Alaska	345,429	1.007082
Arizona	525,992	1.533504
Arkansas	350,108	1.020723
California	2,877,721	8.389849
Colorado	378,623	1.103857
Connecticut	351,616	1.025120
Delaware	345,429	1.007082
District of Columbia	345,429	1.007082
Florida	1,566,984	4.568466
Georgia	840,683	2.450971
Hawaii	345,429	1.007082
Idaho	345,429	1.007082
Illinois	1,158,316	3.377015
Indiana	656,144	1.912956
Iowa	345,429	1.007082
Kansas	345,429	1.007082
Kentucky	521,777	1.521216
Louisiana	583,728	1.701831
Maine	345,429	1.007082
Maryland	449,533	1.310592
Massachusetts	561,046	1.635703
Michigan	1,072,003	3.125373
Minnesota	453,090	1.320962
Mississippi	409,250	1.193149
Missouri	600,365	1.750335
Montana	345,429	1.007082
Nebraska	345,429	1.007082
Nevada	345,429	1.007082
New Hampshire	345,429	1.007082
New Jersey	689,825	2.011152
New Mexico	345,429	1.007082
New York	1,765,521	5.147292
North Carolina	879,455	2.564009
North Dakota	345,429	1.007082
Ohio	1,233,704	3.596805
Oklahoma	393,667	1.147717
Oregon	357,565	1.042464
Pennsylvania	1,303,250	3.799563
Rhode Island	345,429	1.007082
South Carolina	494,963	1.443041
South Dakota	345,429	1.007082

TABLE 2.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection & advocacy	Percentage of total appropriation
Tennessee	657,837	1.917892
Texas	2,014,073	5.871933
Utah	345,429	1.007082
Vermont	345,429	1.007082
Virginia	666,903	1.944324
Washington	511,307	1.490691
West Virginia	362,280	1.056210
Wisconsin	566,640	1.652012
Wyoming	345,429	1.007082
American Samoa	184,802	.538781
Guam	184,802	.538781
Northern Mariana Islands	184,802	.538781
Puerto Rico	993,137	2.895443
Virgin Islands	184,802	.538781
DNA People Services [2]	Legal 184,802	.538781

[1] In accordance with Public Law 106–402, Section 142(a)(6)(A), $700,000 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 142 for this purpose. Unused funds will be reallotted in accordance with Section 122(e) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment under Section 142(a)(6)(B) of the Act.

Dated: April 9, 2003.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–9155 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 02–03]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of the availability of funding to States, Native American tribes, and tribal organizations for Family Violence Prevention and Services.

SUMMARY: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas) and Native American tribes and tribal organizations. The purpose of these grants is to assist States and tribes in establishing, maintaining, and expanding programs and projects to prevent domestic violence and to provide immediate shelter and related assistance for victims of domestic violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2003.

Closing Dates and Applications

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on May 15, 2003.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the Office of Community Services, Administration for Children and Families (ACF), Attention: James W. Gray, Ph.D., 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

ADDRESSES: Applications should be sent to the Department of Health and Human Services, Office of Community Services, Administration for Children and Families, Attention: James W. Gray, Ph.D., 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley (202) 401–5529, James W. Gray (202) 401–5705, or Sunni L. Knight (202) 401–5319, Joseph Lonergan, Director, Division of Mandatory Grants.

Part I. Background Information: Reducing Family and Intimate Violence Through Coordinated Prevention and Services Strategies

The Importance of Coordination of Services

Family and intimate violence has serious and far-reaching consequences for individuals, families, and communities. Estimates from the Department of Justice National Crime Victimization Survey (NCVS) indicate that, in 1998, about 1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends. Such crimes termed intimate partner violence are committed primarily against women. It is important to note that, regardless of the demographic characteristics considered, women experienced intimate partner violence at higher rates than men between 1993 and 1998 (Bureau of Justice Statistics 2000).

The impact of family and intimate violence includes physical injury and

death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes, in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battering. Estimates of the number of women who are homeless because of battering range from 27 percent to 41 percent to 63 percent of all homeless women. The significant correlation between domestic violence and child abuse, and the use of welfare by battered women as an ''economic escape route'' also suggest the need to coordinate domestic violence intervention activities with those addressing child abuse and the welfare program under the Temporary Assistance for Needy Families (TANF) program at the State and local levels.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, service delivery and prevention system may result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, faith and community-based organizations, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties be involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services urges State and Native American tribes receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Part II. General Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Pub. L. 102–295, in 1994 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act, and in 1996 by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act (CAPTA) of 1996. The Act was most recently amended by the ''Victims of Trafficking and Violence Protection Act'' (Pub. L. 106–386, October 28, 2000).

The purpose of this legislation is to assist States, Native American tribes, and tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of domestic violence and to provide immediate shelter and related assistance for victims of domestic violence and their dependents.

During FY 2002, 200 grants were awarded to States and Native American tribes. The Department also awarded 53 family violence prevention grants to nonprofit State domestic violence coalitions.

Additionally, the Department supports the National Resource Center (NRC) for Domestic Violence and four Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February 1996, the Department funded the national domestic violence hotline to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The national domestic violence hotline is a 24-hour, toll-free service, which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors are also available for non-English speaking persons and for people who are hearing-impaired. The hotline number is 1–800–799-SAFE; the TDD number for the hearing impaired is 1–800–787–3224. As of June 30, 2002 the National Domestic Violence Hotline has answered more than 700,000 calls.

B. Funds Available

Of the total appropriation for the Family Violence Prevention and Services program for FY 2003, the Department of Health and Human Services will allocate 70 percent to the designated State agencies administering Family Violence Prevention and Services programs (section 310 (a)) of the Act. The Department will allocate 10 percent to the tribes and tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services (section 310 (a)) of the Act. Additionally, we will allocate 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, advocacy services with other local domestic violence programs, and to encourage appropriate responses to domestic violence within the States.

Five percent of our FY 2003 appropriation will be available to continue the support for the National Resource Center and the four Special Issue Resource Centers. The remaining five percent of the FY 2003 family violence prevention and services funding will be used to support demonstration programs in the areas of training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, and research and other demonstration activities at the national level.

C. State Allocations

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State shall be allotted a base grant of $600,000. The remaining balance of FVPSA funds are to be distributed according to the State population ratio (this ratio reflects the States population to the total populations of all States).

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of one percent of the amounts appropriated.

D. Native American Tribal Allocations

Of the funds available for FY 2003, the Department of Health and Human Services will allocate ten percent for grants to Native American Tribes. Native American Tribes and Tribal Organizations are eligible for funding under this program if they meet the definition of such entities as found in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 b, and are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Native American tribe that believes it meets the above eligibility criteria and should be included in the list of eligible tribes should provide

supportive documentation in its application and a request for inclusion (*see* Native American Tribal Application Requirements in part V).

In computing Native American tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the Bureau Indian Affairs Indian Population and Labor Force Report.

Because section 304 of the Act specifies a minimum base amount for State allocations, we have set a base amount for Native American tribal allocations. Since FY 1986, we have found in practice that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Native American tribes and tribal organizations that meet application requirements are awarded base grants in amounts determined by the following chart:

Category number	Tribal population	Will receive a base amount of—
1	1–1,500	$2,000
2	1,501–3,000	3,500
3	3,001–4,000	4,500
4	4,001–5,000	5,500
5	5,001–6,000	6,500
6	6,001–7,000	7,500
7	7,001–8,000	8,500
8	8,001–9,000	9,500
9	9,001–10,000	10,500
10	10,001–12,000	13,000
11	12.001–14,000	15,000
12	14,001–16,000	17,000
13	16,001–18,000	19,000
14	18,001–20,000	21,000
15	20,001–22,000	23,000
16	22,001–24,000	25,000
17	24,001–26,000	27,000
18	26,001–28,000	29,000
19	28,001–30,000	31,000
20	30,001–32,000	33,000
21	32,001–34,000	35,000
22	34,001–36,000	37,000
23	36,001–38,000	39,000
24	38,001–40,000	41,000
25	40,001–42,000	43,000
26	42,001–44,000	45,000
27	44,001–46,000	47,000
28	46,001–48,000	49,000
29	48,001–50,000	51,000
30	50,001–100,000.	125,000
31	100,001–150,000.	175,000
32	150,001 and over.	225,000

Once the base amounts have been distributed to the tribes that have applied for family violence funding, the ratio of the tribe's population to the total population of all the applicant tribes is then considered in allocating the remainder of the funds. By distributing a proportional amount plus a base amount to the tribes we have accounted for the variance in actual population and scope of the family violence programs. As in previous years, tribes are encouraged to apply as consortia for the family violence funding.

Part III. General Grant Requirements Applicable to States and Native American Tribes

A. Definitions

States and Native American tribes should use the following definitions in carrying out their programs. These definitions are found in section 309 of the Family Violence Prevention and Services Act (the Act).

(1) *Family Violence:* Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) *Shelter:* The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) *Related assistance:* The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers; prevention services such as education on family cohesion, marital stability, and conflict resolution; and valuing individual choices made within the context of personal spirituality, to include faith-based belief systems, and or tribal traditions.

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but does not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

B. Expenditure Periods

The family violence prevention funds under the Act may be used for obligations on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year. This means that FY 2003 funds may be used for obligations through September 30, 2004. Recipients must liquidate all obligations incurred under the award by September 30, 2005.

The family violence prevention funds allotted to Native American tribes and tribal organizations may be used on or after July 1 of each fiscal year for which they are granted, and will be available through June 30 of the following fiscal year. This means that FY 2003 funds may be used for obligations through June 30, 2004. Recipients must liquidate all obligations incurred under the award by June 30, 2005.

C. Reporting Requirements: Content Requirements of the State and Tribal Performance Report

Section 303(a)(4) requires that States file a performance report with the Department describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or subgrantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services that were provided to victims and their dependents. Please note that section 303 (a) (4) of the Family Violence Prevention and Services Act (FVPS) also requires that the federal director of the FVPSA program suspend funding for an approved application if an applicant fails to submit an annual Performance Report. The Performance Report should include the following data elements:

1. *Funding*—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

2. *Shelters*—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding.

- The number of women sheltered.
- The number of shelters and safe houses in the State.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults (13–21 years of age).
- The number of men.
- The number of the elderly.
- The average length of stay.
- The number of women, children, teens, and others referred to other shelters.

3. *Types of individuals served including special populations.* Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification.
- Cultural classification.
- Language (other than English).
- Women of color.
- And other special needs populations.

4. *Related services and assistance.* List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include but are not limited to the following:

- Individual counseling,
- Group counseling,
- Marital Counseling,
- Crisis intervention/hotline,
- Information and referral,
- Batterers support services,
- Legal advocacy services,
- Transportation,
- Services to teenagers,
- Child care,
- Training and technical assistance,
- Housing advocacy,
- Other innovative program activities.

5. *Volunteers*—List the total number of volunteers and hours worked.

6. *Identified Abuse*—Indicate the number of women, children, and men who were identified as victims of physical, sexual, and emotional abuse.

7. *Service referrals*—List the number of women, children, and men referred for the following services: (**Note:** If the individual was identified as a batterer please indicate).

- Alcohol abuse,
- Drug abuse,
- Batterer intervention services,
- Abuse as a child,
- Witnessed abuse,
- Emergency medical intervention,
- Law enforcement intervention.

8. The performance report should include narratives of success stories about services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State, tribe, or tribal organization were addressed, and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (*e.g.,* shelters, safehouses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity, or geographic isolation were addressed, and
- A description and assessment of the prevention activities supported during the program year, *e.g.,* community education events, and public awareness efforts.

Performance reports for the States are due on an annual basis on December 29. Performance reports for tribes and tribal organizations are due on an annual basis on September 28 of each year.

D. Reporting Requirements: Deadlines for Program and Financial Reports

All State grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of each Federal fiscal year, *i.e.,* reports are due on December 28 of each year.

All tribal program reports and annual financial status reports are due 90 days after the end of the expenditure period, *i.e.,* September 29 of each year.

Part IV. Application Requirements for States

A. Eligibility: States

''States'' as defined in section 309(6) of the Act are eligible to apply for funds. The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant under the Social Services Block grant (the Republic of Palau has applied for funds through the Community Services Block Grant). These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

B. Approval/Disapproval of a State's Application

The Secretary will approve any application that meets the requirements of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for the applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

All applications must contain the following information or documents:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under this Act, and the name of a contact person if different from the Chief Program Official (section 303)(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met, including populations underserved because of ethnic, racial, cultural, language diversity, or geographic isolation (section 303(a)(2)(C)).

(a) Identification of the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations; and

(c) Describe the public information component of the State's outreach program; describe the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help and identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions and other knowledgeable individuals and interested organizations, including faith and community-based organizations, to assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C)) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with (section 303(a)(2)(A), 303(a)(3) and 311(a)(5)).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act. Include procedures that ensure that individual client records cannot be identified when providing statistical data on program services and activities (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, the number of shelters to be funded, the services the State will provide, and the expected results from the use of the grant funds (section 303(a)(4)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303)(a)(2)(F)).

All applications must contain the following assurances:

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(f)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of faith and community-based projects of demonstrated effectiveness carried out by non-profit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(e), *i.e.*, not less than 20 percent of the total funds provided for a project under this title with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in kind; and the local share will not include any Federal funds provided under any authority other than this title (section 303(e)).

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(d)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That programs or activities funded in whole or in part under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the FVPSA will be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the FVPSA.

(k) That States will comply with the applicable Departmental record-keeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Part V. Application Requirements for Native American Tribes

A. Eligibility: Native American Tribes

As described above, Native American tribes and tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in subsections (b) and (c) of section 4 of the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

A list of currently eligible Native American tribes is found at Appendix B of this document. Any Native American tribe that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation and a request for inclusion in its application (*see* Application Content Requirements below).

As in previous years, Native American tribes may apply singularly or as a consortium. In addition, a non-profit private organization, approved by a Native American tribe for the operation of a domestic violence shelter or program on a reservation is eligible for funding.

B. Approval/Disapproval of a Native American Tribes Application

The Secretary will approve any application that meets the requirements of the Act and this Announcement, and will not disapprove an application unless the Native American tribe or tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(B)(2)).

C. Native American Tribe Application Content Requirements

The application from a Native American tribe must be signed by the Chief Executive Officer or tribal chairperson of the tribe.

All applications must contain the following information/documents:

(1) The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under the Act, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization

or agency has the authority to submit an application on behalf of the Native American individuals in the tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: tribal officials or social services staff involved in child abuse or domestic violence prevention, tribal law enforcement officials, representatives of State coalitions against domestic violence, and operators of domestic violence shelters and service programs.

(4) A description of the tribe's operation of and/or capacity to carry out a domestic violence prevention and services program. This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safehouse, or domestic violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of domestic violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of ''638'' contracts with the Bureau of Indian Affairs (BIA); title II Indian Child Welfare grants from the BIA; Child Welfare Services grants under title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

(5) A description of the services to be provided, how the Native American tribe or tribal organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services (section 303(b)(2)).

(6) Documentation of the procedures that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act. Include procedures that ensure that individual client records cannot be identified when providing statistical data on program services and activities (section 303(a)(2)(E)).

(7) The EIN number of the Native American tribe, tribal organization, or non-profit organization submitting the application.

Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provided related assistance (section 303(f)).

(b) That grant funds made available under the Act will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(c) That the address or location of any shelter or facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(d) That law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(e) That all programs or activities funded in whole or in part under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(f) That applicant will comply with the applicable Departmental record-keeping and reporting requirements and general requirements for the administration of grants under 45 CFR parts 74 and 92.

Part VI. Other Information

A. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and part 100 do not apply. Federally-recognized Native American tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this instruction have been approved by the Office of Management and Budget under control number 0970–0062.

C. Certifications

Applications must comply with the required certifications found at Appendix A as follows:

1. Anti-Lobbying Certification and Disclosure Form. Pursuant to 45 CFR part 93, the certification must be signed and submitted with the application. If applicable, a standard form LLL, which discloses lobbying payments must be submitted.

2. Certification Regarding Drug-Free Workplace Requirements.

3. Certification Regarding Debarment: The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment certifications do not have to be returned with the application.

4. Certification Regarding Environmental Tobacco Smoke: The signature on the application by the chief program official attests to the applicants intent to comply with the requirements regarding environmental tobacco smoke and services to children under age 18 of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services.)

Dated: April 8, 2003.

Clarence H. Carter,

Director, Office of Community Services.

Appendix A—Required Certifications:

Attachment—A Certification Regarding Lobbying and Disclosure of Lobbying Activities and Instructions

Attachment—B Certification Regarding Debarment;

Attachment—C Regarding Environmental Tobacco Smoke; and

Attachment—D Drug-Free Workplace Requirements.

BILLING CODE 4184–01–P

Administration for Children and Families
U.S. Department of Health and Human Services

Attachment A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Attachment B

Administration for Children and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions Instructions for Certification 1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not

proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
****

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification 1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.3. The prospective lower tier participant shall provide immediate written notice to the person to

which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those
regulations.5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment C

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification) 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. 4. For grantees who are individuals, Alternate II applies. 5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:
Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;
Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).
Certification Regarding Drug-Free Workplace Requirements
Alternate I. (Grantees Other Than Individuals) The grantee certifies that it will or will continue to provide a drug-free workplace by:
(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
(b) Establishing an ongoing drug-free awareness program to inform employees about --
(1)The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 03–9154 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation: Notice of Meeting

AGENCY: President's Committee on Mental Retardation (PCMR), HHS.

ACTION: Notice of meeting.

DATES: Monday, May 12, 2003 from 9 a.m. to 5 p.m.; and Tuesday, May 13, 2003, from 9 a.m. to 3 p.m. The full committee meeting of the President's Committee on Mental Retardation will be open to the public.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Sally Atwater at 202–619–0634 no later than April 25, 2003. We will attempt to meet requests after that date, but cannot guarantee availability. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with mental retardation concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee on Mental Retardation, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a board range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with mental retardation, and for reviewing legislative proposals that impact on the quality of life that is experienced by citizens with mental retardation and their families.

Dated: March 25, 2003.

Sally Atwater,

Executive Director, President's Committee on Mental Retardation.

[FR Doc. 03–9087 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974, As Amended; Computer Matching Program

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.

ACTION: Notice of a computer matching program.

SUMMARY: In compliance with the Privacy Act of 1974, as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, we are publishing a notice of a computer matching program that OCSE will conduct on behalf of itself and the District of Columbia Department of Human Services, Income Maintenance Administration (IMA) for verification of continued eligibility for Public Assistance. The match will utilize National Directory of New Hire (NDNH) records and IMA records. The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are employed and also are receiving payments pursuant to the Temporary Aid to Needy Families (TANF) benefit program being administered by IMA.

DATES: OCSE will file a report of the subject OCSE matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives and the

Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Director, Office of Federal Systems, Office of Child Support Enforcement, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Federal Systems, Office of Child Support Enforcement, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone Number (202) 401–9271.

SUPPLEMENTARY INFORMATION: Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state and local government records.

The amendments require Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with source agencies;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify match findings before reducing, suspending, or terminating an individual's benefits or payments;
4. Furnish detailed reports to Congress and OMB; and
5. Establish a Data Integrity Board that must approve matching agreements.

This Computer Match meets the requirements of Pub. L. 100–503.

Dated: April 7, 2003.

Sherri Z. Heller,

Commissioner, Office of Child Support Enforcement.

Notice of Computer Matching Program

A. PARTICIPATING AGENCIES

OCSE and IMA.

B. PURPOSE OF THE MATCH

To exchange personal data for purposes of identifying individuals who are employed and also are receiving payments pursuant to TANF benefit programs being administered by the IMA and to verify continuing eligibility for TANF benefits.

OCSE will match public assistance records, obtained from IMA, to the NDNH. After matching has been conducted, OCSE will provide matched data to IMA which will use this information to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action, as may be authorized by law and regulation. Under the matching program, IMA will obtain data provided by OCSE.

C. AUTHORITY FOR CONDUCTING THE MATCH

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)(3)).

D. RECORDS TO BE MATCHED

The system of records maintained by the ACF under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match, is the Location and Collection System of Records, DHHS/OCSE No. 09–90–0074, last published in the **Federal Register** at 65 FR 57817 on September 26, 2000. The match is a routine use under this system of records.

OCSE, as the source agency, will collect from IMA electronic files containing the names and other personal identifying data of eligible public assistance beneficiaries. Upon receipt of the electronic files of IMA beneficiaries, OCSE will perform a computer match against the NDNH. The NDNH database consists of Quarterly Wage, New Hire, and Unemployment Insurance information. The matches will be furnished by OCSE to IMA.

1. The electronic files provided by IMA will contain data elements of the client's name and SSN.
2. OCSE will match the SSN on the IMA file by computer against the NDNH database. Matching records, based on SSNs, will produce data elements of the individual's name; SSN; employer, and current work or home address, etc.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. By agreement between DHHS and IMA, the matching program will be in effect for 18 months from the effective date, with an option to renew for 12 additional months, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

[FR Doc. 03–9089 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimate for a Four-Person Family (FFY 2004); Notice of the Federal Fiscal Year (FFY) 2004 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated State median income for FFY 2004.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FFY 2004 (October 1, 2003 to September 30, 2004). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2003, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FFY 2004 State median income estimates.

This listing of estimated State median incomes provides maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2003, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, DHHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–5304, E-Mail: *llitow@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each State, the District of Columbia, and the United States for

FFY 2004 (the period of October 1, 2003, through September 30, 2004).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each State, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FFY 2004 by the Coats Human Services Reauthorization Act of 1998, Pub. L. 105–285, which was enacted on October 27, 1998.

Estimates of the median income of a four-person family for each State and the District of Columbia for FFY 2004 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FFY 2004, the Bureau of the Census used the following three sources of data: (1) The Current Population Survey 2002 Annual Demographic File; (2) the 2000 Decennial Census of Population; and (3) 2001 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce.

As indicated above, the Current Population Survey 2000 Annual Demographic File is one of the data sources used in developing the State median estimates for FFY 2004. The use of this file introduces the following changes in development of the estimates:

1. The Annual Demographic File enhances income estimates produced by the Bureau of the Census from the March Current Population (CPS). In 2001, the Bureau of the Census began referring to the March CPS file as the CPS Annual Demographic File (ADF) due to a significant sample expansion to improve the accuracy of State estimates of children's health insurance coverage and an expansion of the months in which the survey is conducted.

This sample expansion, known as the State Children's Health Insurance Program (SCHIP) sample, has three components: (1) Asking the March Income Supplement questions of selected households in the February and April CPS samples, that is, of the households not also included in the March sample; (2) interviewing selected sample households from the preceding November CPS sample during the February–April period using the March Income Supplement; and (3) increasing the monthly CPS sample in States with high sampling errors for uninsured children. The sample increase added about 28,000 interviewed households to the 2001 ADF, resulting in a total sample size of about 78,000 interviewed households.

Although the expanded sample was implemented in 2001, only information from the regular 2001 March CPS sample was released when the FFY 2003 State median income estimates were calculated. The FFY 2004 estimates shown below use the expanded sample from the 2002 ADF.

2. Prior income estimates from the March CPS have been based on population controls from the 1990 Decennial Census of Population. The 2002 ADF estimates are based on population controls from the 2000 Decennial Census of Population. Nationally, the use of Census 2000-based population controls lowered the national median household income by 0.3 percent.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Bureau of the Census (301–763–3243).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FFY 2004 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 6, 2003.

Clarence H. Carter,

Director.

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FEDERAL FISCAL YEAR 2004 [1]

States	Estimated State median income for a four-person family [2]	60 percent of estimated State median income for a four-person family
Alabama	$54,594	$32,756
Alaska	71,395	42,837
Arizona	56,067	33,640
Arkansas	47,838	28,703
California	63,761	38,257
Colorado	67,634	40,580
Connecticut	82,517	49,510
Delaware	73,301	43,981
District of Col.	61,799	37,079
Florida	56,824	34,094
Georgia	59,497	35,698
Hawaii	66,014	39,608
Idaho	51,098	30,659
Illinois	66,507	39,904
Indiana	63,573	38,144
Iowa	61,656	36,994
Kansas	61,686	37,012
Kentucky	54,319	32,591
Louisiana	51,234	30,740
Maine	58,425	35,055
Maryland	82,879	49,727
Massachusetts	80,247	48,148
Michigan	68,337	41,002
Minnesota	72,635	43,581
Mississippi	46,810	28,086
Missouri	61,036	36,622
Montana	48,078	28,847
Nebraska	60,626	36,376
Nevada	59,283	35,570
New Hampshire	72,606	43,564
New Jersey	80,577	48,346
New Mexico	46,596	27,958
New York	66,498	39,899
North Carolina	56,500	33,900
North Dakota	55,138	33,083
Ohio	64,282	38,569
Oklahoma	53,949	32,369
Oregon	58,737	35,242
Pennsylvania	66,130	39,678
Rhode Island	70,446	42,268
South Carolina	59,212	35,527
South Dakota	59,718	35,831
Tennessee	56,052	33,631
Texas	56,606	33,964
Utah	59,035	35,421
Vermont	62,938	37,763
Virginia	69,616	41,770
Washington	65,997	39,598
West Virginia	49,470	29,682
Wisconsin	65,441	39,265
Wyoming	58,541	35,125

Note—FFY 2004 covers the period of October 1, 2003 through September 30, 2004. The estimated median income for a four-person family living in the United States is $63,278 for FFY 2004. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2003, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a four-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For each additional family member above six persons, add 3% to the percentage for a six-person family (132%), and multiply the new percentage by the State's estimated median income for a four-person family.

[2] Prepared by the Bureau of the Census from the Current Population Survey 2002 Annual Demographic File, 2000 Decennial Census of Population and Housing, and 2001 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA). For further information, contact the Housing and Household Economic Statistics Division at the Bureau of the Census (301–763–3243).

[FR Doc. 03–9088 Filed 4–14–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 03–01]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services (OCS), Administration for Children and Family (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funds to State domestic violence coalitions for grants to carry out family violence intervention and prevention activities.

SUMMARY: This instruction governs the proposed award of fiscal year (FY) 2003 formula grants under the Family Violence Prevention and Services Act (FVPSA) to private non-profit State domestic violence coalitions. The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This instruction sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in FY 2003.

Closing Dates and Applications

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 15, 2003.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the Office of Community Services, Administration for Children and Families (ACF), Attention: Catherine L. Beck, 5th Floor-West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

ADDRESSES: Applications should be sent to the Department of Health and Human Services, Office of Community Services, Administration for Children and Families, Attention: Catherine L. Beck, Fifth Floor—West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION: William D. Riley (202) 401–5529, Catherine L. Beck (202) 401–9352, Sunni Knight (202) 401–5319, or James Gray (202) 401–5705, Joseph Longergan, Director, Division of Mandatory Grants.

SUPPLEMENTARY INFORMATION:

Confidentiality

Family Violence Prevention and Services Act programs must establish or implement policies and protocols that maintain the safety and confidentiality of adult victims of domestic violence and their dependents. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Thus, when providing statistical data on program services and activities, individual identifiers of client records will not be used (section 303G).

I. Introduction

This notice announcing the availability of grants to State Domestic Violence Coalitions carries out several requirements in the FVPSA.

- The Department must use 10 percent of funds under the FVPSA for grants to State Domestic Violence Coalitions; and
- An application for a State coalition grant must meet the specific requirements in the statute covering eligibility and program activities.

In addition, grantees must meet other requirements, such as annual program and financial reporting and fiscal expenditure period requirements.

This notice provides information on all application requirements.

II. Background

As context for this FY 2003 notice, we wish to emphasize the importance of the work of the State Domestic Violence Coalitions and their activities and efforts leading to improved (more comprehensive and integrated) service delivery systems for victims of domestic violence and their dependents. Reducing domestic violence through coordinated prevention and services strategies is the primary goal of national efforts under the statute.

A. The Importance of Coordination of Services

The impact of domestic violence includes physical and psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, prevention and service delivery system is the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. Faith and community based organizations should be included in the coordination and collaborative efforts. It is essential that all interested parties be involved in the design and improvement of intervention and prevention activities.

The significant correlation between domestic violence, child abuse and the use of welfare by battered women as an ''economic escape route'' also suggests the need to coordinate domestic violence intervention activities with programs that address child abuse, and the Temporary Assistance for Needy Families (TANF), the Federal welfare program, at the State and local levels.

B. Strengthening Prevention and Intervention Programs

Domestic violence prevention and services programs need to be inclusive in their efforts to address the needs of majority, as well as underserved, populations. Ethnic and rural communities face unique barriers in seeking services. Culture, language, and isolation can limit these populations from seeking assistance or communicating their needs. People with disabilities require special considerations regarding safety planning, transportation, and/or decreasing the risk of future violence.

Crisis intervention is essential in responding to domestic violence. Assessing the victim's safety, assessing the level of risk, and attending to the psychological and physical effects of trauma requires a coordinated effort among counselors, law enforcement, and medical personnel. Once these immediate needs are addressed, there is a need to continue comprehensive efforts throughout intervention, treatment, and future preventive services, for survivors, families, and perpetrators. These collective efforts could include: transitional housing assistance; child care; job skills training; mental health and substance abuse services to survivors and perpetrators; long-term support for survivors; coordination with adult and child protective services; and safe enforcement of child support for TANF and non-TANF families.

Domestic violence prevention programs may also extend to adolescents. The increasing incidence of date rape and violent adolescent relationships indicate the need to provide educational programs and

intervention prior to adulthood. Adolescents may have witnessed domestic violence as a child, experienced abuse directly, or themselves been perpetrators of abusive behavior. Studies on the prevention of domestic abuse and violence in interpersonal relationships suggest that youth education may represent an effective community action to reduce the incidence of violence in adolescent relationships.

Perpetrators of domestic violence often have multiple problems that contribute to their battering behavior, such as alcohol or drug abuse, insecurity or extreme jealousy, lack of self discipline or criminal behavior, or severe reactions to stress. Consequently, services for perpetrators may be more effective through coordinated efforts with substance abuse, mental health, and criminal justice programs.

Witnessing violence as a child is an important risk factor for being a victim or perpetrator of violence later in life. Developing innovative strategies for identifying and treating child witnesses is an under-explored potential avenue for preventing violence. Providing home visitation services, integrating children into shelter services with survivors, and providing long-term education and outreach can reduce the potential for these children to domestic violence as adults.

III. State Coalition Grant Requirements

This section provides information and requirements for family violence prevention and services grants for State domestic violence coalitions and is organized as follows:

A. Legislative Authority
B. Background
C. Eligibility
D. Funds Available
E. Expenditure Period
F. Application Requirements
G. Reporting Requirements
H. Paperwork Reduction Act
I. Executive Order 12372
J. Certifications

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U. S. C. 10401, *et seq.*) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was amended and reauthorized for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violence Crime Control and Law Enforcement Act of 1994, and by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act Amendment of 1996. The Act was most recently amended by the Victims of Trafficking and Violence Protection Act (Pub. L. 106–386, October 28, 2000).

B. Background

Section 311 of the Act, 42 U.S.C. 10410, requires the Secretary to award grants to statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention.

C. Eligibility

To be eligible for grants under this program announcement, an organization shall be a statewide private non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b);

(2) The Board membership of the coalition is representative of such programs;

(3) The purpose of the coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services (as defined in the FVPSA) for victims of domestic violence and their children; and,

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition:

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

D. Funds Available

The Department will make 10 percent of the Family Violence Prevention and Services Act appropriation available for grants to State domestic violence coalitions. One grant each will be available for the State domestic violence coalitions of the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia. The coalitions of the U. S. Territories (Guam, U. S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for domestic violence coalition grant awards.

E. Expenditure Period

The FVPSA funds may be used for expenditures obligated on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year and may be used for obligations incurred from October 1, 2002. Recipients must liquidate all obligations incurred under the award by September 30, 2004.

F. Application Requirements

The State domestic violence coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information (consistent with the requirements of the Family Violence Prevention and Services Act):

1. A description of the process and anticipated outcomes of utilizing these Federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including:

(a) Training and technical assistance for local programs and professionals working with victims of domestic violence;

(b) Planning and conducting State needs assessments and planning for comprehensive services;

(c) Serving as an information clearinghouse and resource center for the State; and

(d) Collaborating with other governmental systems that affect battered women (section 311(a) (1), 42 U.S.C. 10410(a)(1)).

2. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (section 311(a)(4), 42 U.S.C. 10410(a)(4)).

3. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of issues including:

(a) Inappropriateness of mutual protection orders;

(b) Prohibition of mediation when domestic violence is involved;

(c) Use of mandatory arrests of accused offenders;

(d) Discouragement of dual arrests;

(e) Adoption of aggressive and vertical prosecution policies and procedures;

(f) Use of mandatory requirements for pre-sentence investigations;

(g) Length of time taken to prosecute cases or reach plea agreements;

(h) Use of plea agreements;

(i) Uonsistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(j) Restitution to victims;

(k) Use of training and technical assistance to law enforcement and other criminal justice professionals;

(l) Reporting practices of, and the significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(m) Use of interstate extradition in cases of domestic violence crimes;

(n) The use of statewide and regional planning; and,

(o) Any other matters the State Domestic Violence Coalition believes merits investigation (section 311(a)(2), 42 U.S.C. 10401(a)(2)).

4. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with family law judges, criminal court judges, child protective services agencies, child welfare agencies, family preservation and support service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present, including:

(a) Inappropriate use of mutual protection orders;

(b) Prohibition of mediation when domestic violence is involved;

(c) Inappropriate use of marital or conjoint counseling in domestic violence cases;

(d) Use of training and technical assistance for Family Law Judges, Criminal Court Judges, and court personnel;

(e) The presumption of custody to domestic violence victims;

(f) Use of comprehensive protection orders to grant fullest protection possible to victims of domestic violence, including temporary custody support and maintenance;

(g) Development with Child Protective Services of supportive responses that enable victims to protect their children;

(h) Implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(i) The possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk (section 311(a)(3), 42 U.S.C. 10410(a)(3)).

5. The anticipated outcomes and a description of other activities, including any participation in the National Council Against Domestic Violence; participation in the Violence Against Women Network (VAWANET) and its Web site; and/or collaboration with other national or regional organizations whose purpose is to further domestic violence intervention and prevention.

6. The following documentation will certify the status of the domestic violence coalition and must be included in the grant application:

(a) a description of the procedures developed between the State domestic violence agency and the Statewide coalition that allow for implementation of the following cooperative activities:

(i) the applicant coalition's participation in the planning and monitoring of the distribution of grants and grant funds provided in the State, under section 303(a) of the Act (section 311(a)(5), 42 U.S.C. 10410(a)(5)).

(ii) the participation of the State domestic violence coalition in compliance activities regarding the State's family violence prevention and services program grantees as required by section 303 (3) of the Act. The description should specifically address the coalition's role in planning, monitoring and compliance activities with respect to maintaining client confidentially in accordance with relevant requirements including any requirements under the Health Insurance Probability and Accountability Act of 1996 and section 303 (g) of the Act. (section 303 (g)) requires recipients of FVPSA formula grants to establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking.

(b) A copy of a currently valid 501(c)(3) certification letter from the Internal Revenue Service (IRS) stating private non-profit status; or a copy of the applicant's listing in the IRS' most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;

(c) A copy of the articles of incorporation bearing the seal of the State which the corporation or association is domiciled;

(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's current membership list by organization;

(e) A list of the applicant coalition's current Board of Directors, with each individual's organizational affiliation, and the Chairperson identified;

(f) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and,

(g) A budget narrative that clearly describes the planned expenditure of funds under this grant.

7. Required Documentation and Assurances are to be included in the application as an appendix:

(a) The applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (section 311(b)(4)(A), 42 U.S.C. 10410(b)(4)(A)); and, (ii) Will actively seek and encourage the participation of such organizations in grant funded activities (section 311(b)(4)(B), 42 U.S.C. 10410 (b)(4)(B)).

(b) The applicant coalition must provide a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that representatives of the State Domestic Violence Coalition may testify or make other appropriate communications:

(i) When formally requested to do so by a legislative body, a committee, or a member of such organization (section 311 (d)(1), 42 U.S.C. 10410(d)(1)); or,

(ii) In connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (section 311(d)(2), 42 U.S.C. 10410 (d)(2)).

(c) The applicant coalition must provide a signed statement that the State domestic violence coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, and national origin or religion, in accordance with section 307 of the Act, 42 U.S.C. 10406.

G. Reporting Requirements

1. The State domestic violence coalition grantee must submit an annual

report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out; the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the State child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year in which the grant is awarded (December 29). The final program report is due 90 days after the end of the expenditure period (December 29). Program Reports are to be sent to: Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 370 L'Enfant Promenade, SW., 5th Floor West, Washington, DC 20447.

2. The State domestic violence coalition grantees must also submit an annual financial report, Standard Form 269 (SF–269). A financial report is due 90 days after the end of the fiscal year in which the grant is awarded. A final financial report is due 90 days after the end of the expenditure period. Financial reports are to be sent to: Administration for Children and Families, Division of Mandatory Grants, Attention: Joseph Lonergan, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting of record-keeping requirement inherent in a proposed or final rule, or program announcement. This program announcement contains information collection requirements in sections (F) and (G) of Part III, which require that certain information must be provided in annual reports, fiscal reports, and as part of a grantee's application.

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

In accordance with the PRA, the application requirements contained in this notice have been approved by OMB under control number 0970–0062. This project description expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

I. Executive Order 12372

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and part 100 do not apply.

J. Certifications

Applicants must comply with the required certifications found at Attachments A, B, C, and D as follows:

1. *The Anti-Lobbying Certification and Disclosure Form* must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments, must be signed and submitted.

2. *Certification Regarding Debarment:* The signature on the application by a coalition official responsible for the administration of the program attests to the applicant's intent to comply with the Debarment Certification. The Debarment Certification does not have to be returned with the application.

3. *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by a coalition official certifies that the applicant will comply with the requirements regarding environmental tobacco smoke and services to children under 18 of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any standards which contain provisions for children's Services and that all grantees shall certify accordingly.

4. *Certification Regarding Drug-Free Workplace Requirements:* The signature on the application by a coalition official attests to the applicant's intent to comply with the Drug-Free Workplace requirements.

(Catalog of Federal Domestic Assistance Number 93.591, Family Violence Prevention and Services: Grants to State Domestic Violence Coalitions)

Dated: April 8, 2003.

Clarence H. Carter,

Director, Office of Community Services, ACF/DHHS.

List of Attachments

Attachment A—Certification Regarding Lobbying
Attachment B—Certification Regarding Debarment
Attachment C—Certification Regarding Environmental Tobacco Smoke
Attachment D—Certification Regarding Drug-Free Workplace

BILLING CODE 4184–01–P

Attachment A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously-submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Attachment B – Page 1

Administration for Children and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment C

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule

and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1)The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 03–9212 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the cumulative list of orphan drug and biological designations as of December 31, 2002. FDA has announced the availability of previous lists, which are updated monthly, identifying the drugs and biologicals granted orphan designation under the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the cumulative list of orphan drug and biological designations are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fritsch, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan designation of their drug or biological under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a cumulative list of orphan drug and biological designations. This list includes the name of the drug or biological, the specific disease/condition for which the drug or biological is designated, and information about the sponsor such as the name, address, telephone, and contact.

At the end of each calendar year, the agency publishes a cumulative list of orphan drug and biological designations current through the calendar year. The list that is the subject of this notice is the cumulative list of orphan drug and biological designations through December 31, 2002, and, therefore, brings the June 7, 2002 (67 FR 39409) publication up to date. This list is available upon request from the Dockets Management Branch (see **ADDRESSES**). Those requesting a copy should specify Docket No. 84N–0102, which is the docket number for this notice. In addition, the list is updated monthly and is available upon request from OPD or the FDA's Dockets Management Branch (see **ADDRESSES**). The current list is also available on the Web site at http://www.fda.gov/orphan.

The orphan designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing a drug or biological for an orphan indication must apply for orphan designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested (21 CFR 316.23). Copies of the orphan drug regulations (21 CFR part 316) (57 FR 62076, December 29, 1992) and explanatory background materials for use in preparing an application for orphan designation may be obtained from OPD (see **ADDRESSES**).

The names of the drugs and biologicals shown in the cumulative list of orphan designations may change upon marketing approval/licensing, reflecting the established, proper name approved by FDA. Because drugs and biologicals not approved/licensed for marketing are investigational, the appropriate established, proper name has not necessarily been assigned.

Dated: April 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9226 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 15, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss biologics license application (BLA) 103976, XOLAIR Omalizumab (Humanized Monoclonal Antibody to Human IgE) by Genentech, Inc., for the treatment of allergic asthma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 8, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 8, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 8, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9225 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0368]

Draft Guidance for Industry on Submitting Marketing Applications According to the ICH/CTD Format; General Considerations; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 16, 2003, the comment period for the draft guidance for industry entitled ''Submitting Marketing Applications According to the ICH/CTD Format; General Considerations'' that appeared in the **Federal Register** of September 5, 2001 (66 FR 46464). The agency is taking this action in response to several informal requests for an extension of the comment period.

DATES: Submit written or electronic comments on the draft guidance by June 16, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20857, 301–594–5400; or Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 5, 2001 (66 FR 46464), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Submitting Marketing Applications According to the ICH/CTD Format; General Considerations.'' This guidance provides information on how to organize new drug applications, abbreviated new drug applications, and biologics license applications based on the International Conference on Harmonization M4 guidance on organizing the Common Technical Document for the registration of pharmaceuticals for human use. Interested persons were given until November 5, 2001, to submit written or electronic comments on the draft guidance. In response to several informal requests from drug and biologic manufacturers, FDA has decided to reopen the comment period on the draft guidance until June 16, 2003, to allow interested persons additional time to submit comments.

II. Comments

Interested persons may, on or before June 16, 2003, submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9224 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of March 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AIRD, EILEEN B RIDGEWOOD, NJ	04/20/2003
ALMAZAN, MARIA LA CANADA, CA	04/20/2003
AMADOR, CARLOS MIAMI, FL	04/20/2003
AMY, LESLIE W RAYBROOK, NY	04/20/2003
BAIRD, KARIN LYNN YUCAIPA, CA	04/20/2003
BARON, ADOLFO MIAMI, FL	04/20/2003
BENTHALL, MARK JOSEPH ST LOUIS, MO	04/20/2003
BOOKER, THELMA A ATCHISON, KS	04/20/2003
BREARY, CHESTER H JR ORIENT, OH	04/20/2003
BRINGAS, AL YAZOO CITY, MS	04/20/2003
CANABAL-ENRIQUEZ, JOSE YAUCO, PR	04/20/2003
CANET, FRANCISCO	04/20/2003

Subject, city, state	Effective date
HAWTHORNE, CA	
CASTELLON, MIRIAM MAGALY ..... MIAMI, FL	04/20/2003
CHADWICK, GARY V ..... WEST VALLEY, UT	04/20/2003
CORNWALL, RICHARD O ..... ADVANCE, NC	04/20/2003
CROSS, HARRY G ..... GOLDSBORO, NC	04/20/2003
DAO, MICHAEL M ..... CLARKSVILLE, TN	08/24/1998
DAVIS, VIRGIL JR ..... COMPTON, CA	04/20/2003
DIALYSIS WITH HEART, INC SHREWSBURY, PA	04/20/2003
DIVERSIFIED HEALTH SVCS MEMPHIS, TN	08/27/2001
EPSTEIN, HELEN ..... N WOODMERE, NY	04/20/2003
FERNANDEZ, ELIO ..... MIAMI, FL	04/20/2003
FULCRUM SERVICES, INC .... TAMPA, FL	04/20/2003
GALIANO, CARMEN ..... MIAMI, FL	04/20/2003
GARDNER, THOMAS VINCENT ..... TRAVERSE CITY, MI	04/20/2003
GENCO, RICHARD ..... S FALLSBURGH, NY	04/20/2003
GLICKLICH, DANA NATALIA .. NEW YORK, NY	04/20/2003
GRIMBLE, GERVIS JEROME .. LOS ANGELES, CA	04/20/2003
GS CARE CORP ..... TAMPA, FL	04/20/2003
HANNA, GEORGE ..... LOS ANGELES, CA	04/20/2003
HERNANDEZ, ROLANDO ARIAS ..... INGLEWOOD, CA	04/20/2003
IMANI, ALI GHAZVINY ..... LOS ANGELES, CA	04/20/2003
IZZO, MARY JO ..... ROCHESTER, NY	04/20/2003
JEREZ, MERCEDES ..... MIAMI, FL	04/20/2003
JOHNSON, DARRELL ..... MIAMI, FL	04/20/2003
JONES, GENOLA ..... MIRAMAR, FL	04/20/2003
KAI, TAMMY ..... KAILUA, HI	04/20/2003
KALIANA, KUMAR M ..... OXFORD, WI	04/20/2003
KATZ, ROBERT ..... BAY SHORE, NY	04/20/2003
KHAN, AZIZ ..... DIX HILLS, NY	04/20/2003
KILLINGS, CURTIS EARL ..... LOS ANGELES, CA	04/20/2004
KOSHKARYAN, OGANES ..... LOS ANGELES, CA	04/20/2003
KUSHKIN, ALEX L ..... COLUMBUS, OH	04/20/2003
LACEY, ESTHER A ..... ATLANTA, GA	04/20/2003
LOUIS, JACQUES C ..... HARTSDALE, NY	04/20/2003
LUGONES, LOYDA L ..... COLEMAN, FL	04/20/2003
LUGONES, PEDRO ..... MIAMI, FL	04/20/2003
MANUEL, LAUREANO M ..... CAMP HILL, PA	04/20/2003
MASSENBURG, OLAF ..... WINSTON-SALEM, NC	04/20/2003
MENA, MARIO R ..... PENSACOLA, FL	04/20/2003
MOLINA, ESPERANZA ELIZABETH RI ..... BELL, CA	04/20/2003
MORALES, EMMAR D ..... N ANDOVER, MA	04/20/2003
MOTA, REINIRDO ..... MIAMI, FL	04/20/2003
MUNACO, VITO ..... ROCHESTER, MI	04/20/2003
MURRAY, GERALDINE ..... MIAMI, FL	04/20/2003
NODARSE, ANGELA ..... MIAMI, FL	04/20/2003
PEREZ, LUIS ARMANDO ..... COLEMAN, FL	04/20/2003
PEREZ, JORGE ENRIQUE ..... MIAMI BEACH, FL	04/20/2003
PERKINS, CAROLYN ..... CAMPBELL, MO	04/20/2003
PILLOT-COSTAS, JUAN ..... PONCE, PR	04/20/2003
PUMA, YOON ..... LONG BEACH, CA	04/20/2003
SCARBOUGH, BENARD KEYES ..... LOS ANGELES, CA	04/20/2003
SIEBZENER, MARC LOUIS ..... CHICAGO, IL	04/20/2003
SIMPSON, CYNTHIA ..... MOUNT VERNON, NY	04/20/2003
SINIBALDI, JOSE LUIS ..... INGLEWOOD, CA	04/20/2003
SKORUPKO, VADIM A ..... SAN JOSE, CA	04/20/2003
SMART, TWANA JEAN ..... LAS VEGAS, NV	04/20/2003
SREY, THAVY ..... SIGNAL HILL, CA	04/20/2003
TALEI, MOUSA ..... LOS ANGELES, CA	04/20/2003
THOMAS, SHARON A ..... ATCHISON, KS	04/20/2003
THOMAS, ARCHIE MELVIN .... LOS ANGELES, CA	04/20/2003
THOMPSON, EDWIN G ..... CLEVELAND, OH	04/20/2003
TRICHE, MITCHELL RAY SR .. LOS ANGELES, CA	04/20/2003
URCHECK, JEROME WALTER BERKLEY, MI	04/20/2003
VALDES, ROLANDO R ..... HIALEAH, FL	04/20/2003
WHITE, LEROY SYDNEY ..... COMPTON, CA	04/20/2003
WILLIAMS, EDDIE LEE ..... OPA LOCKA, FL	04/20/2003
WOODS, RHONDA ..... DUBLIN, VA	04/20/2003
YDROVO, ERICKA ..... MIAMI, FL	04/20/2003
YDROVO, OSCAR ..... MIAMI, FL	04/20/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BERLOW, BERNARD ..... MINERSVILLE, PA	04/20/2003
BOWEN, DENNIS ..... LEWISTOWN, PA	04/20/2003
DENNY, MARY ELLEN ..... BAINBRIDGE, IN	04/20/2003
EDWARDS, MARY LATRICE .. COLORADO SPRNGS, CO	04/20/2003
HALE, KIMBERLY RENEE ..... CEDAR RAPIDS, IA	04/20/2003
MCMAHAN, ANN ALEXANDER BLACK MOUNTAIN, NC	04/20/2003
NEWMAN, LEE DAVID ..... LOS ANGELES, CA	04/20/2003
PIERARD, JAMES EDWARD .. E PEORIA, IL	04/20/2003
RAPER, HEATHER ..... CORDELE, GA	04/20/2003
SIRCAR, SAMAR ..... ROLLING HILLS, CA	04/20/2003
SOGOMONYAN, GEORGIY R LOMPOC, CA	04/20/2003
SORENSEN, PHILIP M ..... OKEMOS, MI	04/20/2003
STETZ, MICHAEL ..... POTTERVILLE, MI	04/20/2003
FELONY CONTROL SUBSTANCE CONVICTION	
BETUSH, MONICA ..... OLEAN, NY	04/20/2003
GALPIN, KENNETH SCOTT .... PLACERVILLE, CA	04/20/2003
GARCIA-MEDINA, BENJAMIN A ..... WHITE DEER, PA	04/20/2003
GRAVES, JAMES FREDERICK PACE, FL	04/20/2003
INFANTINO, VERNON A ..... AKRON, OH	04/20/2003
PEARRE, PAMELA G ..... JEFFERSON CITY, MO	04/20/2003
REYNOLDS, JANA L ..... SPANISH FORK, UT	04/20/2003
SNYDER, BARBARA ELLEN ... ROCKVILLE, IN	04/20/2003
TOLEDO, ISABELLE SLOWMAN ..... SMITHFIELD, UT	04/20/2003
WESTHOFF, JACQUELINE NELL ..... FORT MORGAN, CO	04/20/2003
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALFORD, JARED ..... NEWARK, NJ	04/20/2003
BONNER, LISA L ..... WETUMPKA, AL	04/20/2003
CLARENDON, HENRY MOWAT ..... GAINESVILLE, FL	04/20/2003
DESENCLOS, ERIC JOSEPH MORENO VALLEY, CA	04/20/2003
FANNIN, BARBARA ..... ATLANTA, GA	04/20/2003
GARDNER, TOD THOMAS ..... HOPKINS, MN	04/20/2003
HACKBART, DAVID ALAN ..... PLYMOUTH, MN	04/20/2003
IVORY, CONSTANT MARIE .... BUNKIE, LA	04/20/2003
JOHNSON, PEARLIE LATIMER	04/20/2003

Subject, city, state	Effective date
ALBANY, GA	
KANDOVA, ROZA M ..... PHOENIX, AZ	04/20/2009
MCBETH, MARGARET C ..... CROSS ANCHOR, SC	04/20/2003
MILLER, SUSAN E ..... SOMERSET, WI	04/20/2003
NICHOLSON, DAVID WAYNE FLORENCE, AZ	04/20/2003
REDDY, HARI MARAYANA ..... VICTORVILLE, CA	04/20/2003
RICE, VERNON E ..... KANSAS CITY, MO	04/20/2003
SAIKIA, SATYAKI R ..... WAUPUN, WI	04/20/2003
SEYMOUR, PATRICIA ..... HULL, GA	04/20/2003
SPURGEON, MICHAEL D ..... HARRISMAN, TN	04/20/2003
STRONG, ANTHONY RICHARD ..... ARVADA, CO	04/20/2003
TAMEZ, ANDREW ..... CORPUS CHRISTI, TX	04/20/2003
THELEN, TRACY ROSE ..... EDEN VALLEY, MN	04/20/2003
CONTROLLED SUBSTANCE CONVICTIONS	
FLACK, PATRICA ANN ..... SPRINGFIELD, OH	04/20/2003
KELLY, CAROLINE LEE ..... NORWAY, MI	04/20/2003
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ABELL, SONIA T ..... PALMYRA, MO	04/20/2003
AKERS, ALVIN E ..... MOUNT DORA, FL	04/20/2003
ALLSBURY, ROSEANNE D ..... SILSBEE, TX	04/20/2003
AMISOLA, JUDE M ..... DIAMOND BAR, CA	04/20/2003
ANDERSON, URSULA ..... LOS ANGELES, CA	04/20/2003
AUSTIN, KIM E ..... MESA, AZ	04/20/2003
BARAJAS, LAURIE Y ..... SHERRARD, IL	04/20/2003
BARNET, DONNA LYNN ..... MESA, AZ	04/20/2003
BARRETT, THOMAS J ..... EVANS, GA	04/20/2003
BARTON, LINDA ANN ..... MODESTO, CA	04/20/2003
BENEDICT, MAUREEN ELAINE ..... ST JOSEPH, MO	04/20/2003
BERKOWITZ, ROBERT A ..... LYNDHURST, OH	04/20/2003
BLACK, CHRISTY ANN ..... MERIDIAN, ID	04/20/2003
BLACK, ELWANDA ..... ALPINE, AL	04/20/2003
BOOTMAN, STEVEN CRAIG .. LAKE FOREST, CA	04/20/2003
BOYD, JUDITH MARLENE ..... BONIFAY, FL	04/20/2003
BRADFORD, PAUL MARTIN ... HIGHLAND, CA	04/20/2003
BRANDT, TOBY E ..... MACUNGIE, PA	04/20/2003
BREWER, HOLLY ..... VINTON, VA	04/20/2003
BROWN, ALBERT HARVEL .... CHICAGO, IL	04/20/2003
BROWN, MICHELLE R ..... RICHMOND, VA	04/20/2003
BRYANT, HOLLI ..... TRUSSVILLE, AL	04/20/2003
BURLAS, JEANNIE WITT ..... LATROBE, PA	04/20/2003
CARROLL, JAMES L ..... CLEARWATER, FL	04/20/2003
CARTER, BRADD SCOTT ..... GRAND JCTION, CO	04/20/2003
CATHA, DELVIN ..... BAPCHULE, AZ	04/20/2003
CEETO, HENRY ..... RANCHO CUCAMONGA, CA	04/20/2003
COCHRANE, DENNIS JOEL ... SALINA, KS	04/20/2003
COE, AMY D ..... PHOENIX, AZ	04/20/2003
COLLINS, LEE ANN ..... LEMON FURNACE, PA	04/20/2003
COOKMAN, WADE E ..... TUCSON, AZ	04/20/2003
COPELAND, GROVER H III .... CHICAGO, IL	04/20/2003
COPPOLA, LURA M ..... GLENDALE, AZ	04/20/2003
COVERDALE, JULIE ANN ..... PALMYRA, NJ	04/20/2003
CREWS, TARA DAWN ..... NATHALIE, VA	04/20/2003
CSAPO, DORINE SUE ..... FLINT, MI	04/20/2003
DAVIS, JEREMY PHILIP ..... HOLLYWOOD, FL	04/20/2003
DAVIT, SAMUEL ..... CLIFFSIDE PARK, NJ	04/20/2003
DAVITIASHVILI, NODARI ..... REGO PARK, NY	04/20/2003
DAVY, GAGE WILLIAM ..... HUDSON, FL	04/20/2003
DECHORETZ, RAY G ..... MELROSE, MA	04/20/2003
DEL REAL, FRANK III ..... FRESNO, CA	04/20/2003
DISABATO, ELEANOR JOAN HARTFORD, CT	04/20/2003
DOWNING, LAURA ELIZABETH ..... GADSDEN, AL	04/20/2003
DUGAN, TERRI L ..... GLENSHAW, PA	04/20/2003
FARQUHAR, PERRY GORDON ..... MAD RIVER, CA	04/20/2003
FEIGHTNER, ROBERT DUANE ..... TUCSON, AZ	04/20/2003
FELKER, MAUREEN ANN ..... BEVERLY HILLS, CA	04/20/2003
FISCHER, NISHA L ..... TEMPE, AZ	04/20/2003
FISHER, KAREN KLOVANISH LEBANON, IN	04/20/2003
FISHER, KIMBERLY MICHELLE ..... JACKSONVILLE, FL	04/20/2003
FLEMING, RICHARD E ..... SAN LUIS OBISPO, CA	04/20/2003
FLETCHER, JEREMIAH R ..... CONWAY, VA	04/20/2003
GEORGE, LAVERA M ..... MCKEESPORT, PA	04/20/2003
GERO, MARLENE BRENT ..... DAYTONA BEACH, FL	04/20/2003
GHRAMM, KIMBERLY ANN .... SHOW LOW, AZ	04/20/2003
GILLARD, MARY S ..... ASBURY PARK, NJ	04/20/2003
GRABOSKI, TAMMY L ..... DUNCANSVILLE, PA	04/20/2003
HALL, HEIDE HALLADAY ..... SCOTTSDALE, AZ	04/20/2003
HARPER, KYRA MAMIE ..... CHICAGO, IL	04/20/2003
HEERLEIN, CHRISTINE N ..... FENTON, MO	04/20/2003
HERZOG, MARK S ..... PINCKNEY, MI	04/20/2003
HOUSER, ALFRED JAMES ..... SANFORD, FL	04/20/2003
HOWLE, SUSAN L ..... PHILADELPHIA, PA	04/20/2003
HUTER, ERIC LAWRENCE ..... FT WALTON BCH, FL	04/20/2003
INGLE, MARGUERITE B ..... NORFOLK, VA	04/20/2003
IVORY, GERRY N ..... CHICAGO, IL	04/20/2003
JAMES, GARY D ..... HAZARD, KY	04/20/2003
JARBOE, KATHRYN ROSE ..... LEWISTON, ME	04/20/2003
KELLY, KATHY JOE ..... LOVELAND, CO	04/20/2003
KINSER, JIMMY NOEL ..... COEUR D'ALENE, ID	04/20/2003
KLAUMENZER, JANE W ..... LONG BRANCH TWP, NJ	04/20/2003
KLEEFELD, BETTINA ..... BIG RIVER, CA	04/20/2003
KNOEFLER, HALEE CRAIG .... RIVERSIDE, CA	04/20/2003
KOZUSKO, DEBORAH LOUISE ..... OMAHA, NE	04/20/2003
KULMA, ROGER L ..... DOWNERS GROVE, IL	04/20/2003
LACHARITE, CHRISTOPHER BOYNTON BEACH, FL	04/20/2003
LE, TRUNG DUY ..... PHOENIX, AZ	04/20/2003
LOPEZ, JULIAN GARCIA ..... LOS ANGELES, CA	04/20/2003
LOWE, MONICA ELIZABETH .. BAKERSFIELD, CA	04/20/2003
LUMAKIN, RODOLFO DIVINAGRACIA ..... BELLFLOWER, CA	04/20/2003
MANIACI, BARBARA MELLER CAMILLUS, NY	04/20/2003
MANOS, MICHAEL G ..... GROVETOWN, GA	04/20/2003
MARTINEZ PHARMACY DISCOUNT, IN ..... MIAMI, FL	04/20/2003
MAUER, WILLIAM JOHN JR ... ARLINGTON HGTS, IL	04/20/2003
MAY, APRIL ANN ..... BOISE, ID	04/20/2003
MAZZACANO, JULIE A ..... TREVOSE, PA	04/20/2003
MAZZI, JAMES ALBERT	04/20/2003

Subject, city, state	Effective date
HUBBARD, OH	
MCCONAGHY-KALER, KRISTEN	04/20/2003
AGUANGA, CA	
MCCRARY, CHRISTEEN FINGER	04/20/2003
REDLANDS, CA	
MCDONOUGH, EDITH	04/20/2003
PORTSMOUTH, NH	
MCKINSTER, MICHAEL	04/20/2003
COLTON, CA	
MCLAREN, JACQUELINE LEA	04/20/2003
BRIGHTON, CO	
MCMILLAN, SUSAN ELIZABETH	04/20/2003
MESA, AZ	
MERCIER, MARY E	04/20/2003
NEW BRITAIN, CT	
MILLIRON, NANCY PAISLEY	04/20/2003
SALEM, VA	
MURRAY, WILLIAM O	04/20/2003
KNOXVILLE, TN	
MYERS, DEBRA KAY	04/20/2003
CARMICHAEL, CA	
NICHOLS, NANCY	04/20/2003
ROCHESTER, NY	
NIELSEN, LORI PRESTWICH	04/20/2003
OREM, UT	
OZOLINS-MORGAN, KELLY ANN	04/20/2003
EDMOND, OK	
PETERSON, SHERRY L	04/20/2003
WEST PLAINS, MO	
PHAM, MEGAN LOAN	04/20/2003
WESTMINSTER, CA	
PITMAN, KATHRYN A	04/20/2003
MOBILE, AL	
POL, WILLIAM	04/20/2003
LAKE HAVASU CITY, AZ	
POPE, BOBBY II	04/20/2003
WAUKETAN, IL	
PORTALES, RAMON	04/20/2003
SAN DIMAS, CA	
PRICE, DORIS	04/20/2003
RUTHER GLEN, VA	
RABUKHIN, ALEKSANDER	04/20/2003
REGO PARK, NY	
RICHARDSON, KENNETH DEWAYNE	04/20/2003
SARALAND, AL	
RIDGLEY, HARRY DEAN	04/20/2003
ORTING, WA	
RIPA, NICOLE ELIZABETH	04/20/2003
BEATRICE, NE	
ROBBINS, DONNA JEAN	04/20/2003
EDGEWATER, CO	
ROBERTS, JUDY A	04/20/2003
WYNANTSKILL, NY	
RUSSELL-FREY, SHERRI LEIGH	04/20/2003
TUCSON, AZ	
SAGE, TRUDANCE LYNN	04/20/2003
PUEBLO, CO	
SALTER, FRANCES D	04/20/2003
ATMORE, AL	
SAMUELS, ERIC LEE	04/20/2003
KANKAKEE, IL	
SCHAAF, PAMELA JEANNE	04/20/2003
BOUNTIFUL, UT	
SCOTT, DONNA L	04/20/2003
PHOENIX, AZ	
SEELYE, TREVOR D	04/20/2003
LAFAYETTE, CA	
SEKAYUMPTEWA, MARY LOU	04/20/2003
PHOENIX, AZ	
SELLNER, RUSSELL P	04/20/2003
COLORADO SPRNGS, CO	
SETTLES, REBECCA ANN	04/20/2003
LOS ANGELES, CA	
SHAFFER, BARRY GRANT	04/20/2003
BRIGHTON, CO	
SHANNON, CATHY A	04/20/2003
PHOENIX, AZ	
SIEGLER, MICHAEL LAWRENCE	04/20/2003
SUNNYVALE, CA	
SLAWINSKI, LISA MARIE	04/20/2003
SPRING HILL, FL	
SMITH, KATHY L	04/20/2003
SACO, ME	
SMITH, MARGARET JEAN	04/20/2003
KISSIMMEE, FL	
SMITH, STANLEY ORVAL	04/20/2003
REDDING, CA	
SMITHMEN, ANNA	04/20/2003
ELMIRA, NY	
SOMMER, JUDITH FORNES	04/20/2003
N TONAWANDA, NY	
SON, KA MYUNG	04/20/2003
LOS ANGELES, CA	
SOX, JOE HOWLE	04/20/2003
GULF SHORES, AL	
SPAIN, ROBERTA LEA	04/20/2003
OKEMAH, OK	
SPIRES, FAYE D	04/20/2003
WILMINGTON, NC	
SPURLOCK, RODNEY ARTHUR	04/20/2003
BELLEVUE, NE	
STEINER, GINNY MARIE	04/20/2003
TWIN FALLS, ID	
STEVENS, TRACY M	04/20/2003
EGG HARBOR CITY, NJ	
STILES, SHIRLEY LEE	04/20/2003
SUN CITY, CA	
STOLTZ, KAREN S	04/20/2003
ALTOONA, PA	
STRANGE, KIMBERLY KAY	04/20/2003
BROWNSBURG, IN	
SULLENTRUP, ANGEL LEE	04/20/2003
NEWBERG, MO	
SWARTZ, WENDY QUIRIN	04/20/2003
ALTOONA, PA	
SWEENEY, DREMA MERCER	04/20/2003
GREENVILLE, KY	
TAKAYAMA, DUANE	04/20/2003
SAN GABRIEL, CA	
TAMRAT, MERSHA	04/20/2003
GLENDALE, AZ	
TATGE, LUTHER WILLIS	04/20/2003
GOLDEN, CO	
TAYLOR, JAMES	04/20/2003
PHOENIX, AZ	
UNGER-MODER, JILL	04/20/2003
W LAFAYETTE, IN	
VANDENBERG, CINDY LOU	04/20/2003
HENRIETTA, NY	
VANDERGRIFF, JUDITH LYNNE	04/20/2003
DECATUR, AL	
VARNER, RONALD L	04/20/2003
EVANS, GA	
VEAL, PHILLIP MARK	04/20/2003
TUCSON, AZ	
VEAL, ANTHONY DEWAYNE	04/20/2003
PHOENIX, AZ	
VISEK, TERI LU	04/20/2003
OMAHA, NE	
VOGT, REGINA KAY	04/20/2003
MINNEAPOLIS, MN	
WELLS, TRACY JON	04/20/2003
ROCKLIN, CA	
WHEELER, HEATHER	04/20/2003
BRIGHAM CITY, UT	
WHITE, MICHAEL DALE	04/20/2003
STEPHENS CITY, VA	
WILLIAMS, LILLIAN	04/20/2003
COLUMBIA, MD	
YARROW, ROBIN ANN	04/20/2003
PORTLAND, CT	
YATES, MILDRED GERALDINE	04/20/2003
TROY, NY	
YOUNG, JAMES M	04/20/2003
SIERRA VISTA, AZ	
FEDERAL/STATE EXCLUSION/SUSPENSION	
BRUSILOVSKY, ROMAN	04/20/2003
GLENVIEW, IL	
KOPP, RUTH LEWSHENIA	04/20/2003
PEKIN, IL	
LEE, HOI W	04/20/2003
RENTON, WA	
FRAUD/KICKBACKS	
HELLER, ERI	08/19/2002
SANTA MONICA, CA.	
OWNED/CONTROLLED BY CONVICTED ENTITIES	
ALAMO MEDICAL SUPPLY & EQPMT	04/20/2003
VAN NUYS, CA	
ALL STAR MARKETING INC	04/20/2003
MIAMI, FL	
ATLAS CLINICAL LAB, INC	04/20/2003
CORAL GABLES, FL	
BEST CARE CORP	04/20/2003
PENSACOLA, FL	
BEST MEDICAL BILLING, INC	04/20/2003
MIAMI, FL	
BLUE SKIES AND CANDY	04/20/2003
STOCKBRIDGE, GA	
MARIO MENA CORPORATION	04/20/2003
PENSACOLA, FL	
MIAMI CARE, INC	10/02/2001
MIAMI, FL	
NW ADULT DAY CARE CENTER, INC	04/20/2003
JACKSONVILLE, FL	
NW ADULT DAYCARE CTR OF JACK	04/20/2003
JACKSONVILLE, FL	
SANTA MONICA DISCOUNT PHARMACY	04/20/2003
LOS ANGELES, CA	
UNITED RESPIRATORY SVCS, INC	04/20/2003
MIAMI, FL	
WELLBEING DIAGNOSTIC CTR, INC	04/20/2003

Subject, city, state	Effective date
PENSACOLA, FL	
DEFAULT ON HEAL LOAN	
ARRON, BRETT LAWRENCE CHICAGO, IL	04/20/2003
BANERJEE, KAUSTUV PHILADELPHIA, PA	04/20/2003
BELL, DEREK A NORRISTOWN, PA	04/20/2003
DUDLEY, JAMES L LAS VEGAS, NV	04/20/2003
EVANS, STEVEN D PITTSBURGH, PA	04/20/2003
GAIN, JOHN J OXFORD, PA	04/20/2003
GILES, BEVERLY A PHILADELPHIA, PA	03/04/2003
HYNEMAN, MARTIN P READING, PA	04/20/2003
LABATE-STERLING, CATHLEEN A GRANTHAM, NH	04/20/2003
MCANALLEN, CURTIS M WESTERVILLE, OH	02/03/2003
SALOMON, ALIX P CHICAGO, IL	01/09/2003
SMITH, JOHN D PHILADELPHIA, PA	04/20/2003
SPEER, JAMES D CORPUS CHRISTI, TX	04/20/2003

Dated: March 31, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–8802 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard Maritime Administration

[USCG 2003–14134]

Port Pelican LLC Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Coast Guard and the Maritime Administration will hold a public meeting/informational open house to discuss issues to be addressed in the environmental impact statement for the Port Pelican LLC natural gas deepwater port license application.

DATES: The meeting date is April 29, 2003, 3 p.m. to 7 p.m., Lafayette, LA.

ADDRESSES: The meeting location is: Lafayette Hilton Hotel, West Pinhook Rd, Lafayette, LA 70503, (337) 235–6111.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project or the meeting, contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard and the Maritime Administration (MARAD) recently issued a notice of intent (68 FR 16808, Apr. 7, 2003) to prepare an environmental impact statement (EIS) in connection with the Port Pelican LLC natural gas deepwater port license application. As part of the scoping process summarized in that notice, and as authorized by 40 CFR 1508.22 (b)(4), the Coast Guard and MARAD will hold a public meeting and informational open house in Lafayette, Louisiana on April 29, 2003, at the time and location noted above under **DATES** and **ADDRESSES.** Public comments will be accepted at that meeting and can also be submitted to the docket, as described in the April 7, 2003 notice of intent. Consult that notice for further information about the Port Pelican LLC license application. If you plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT.**

Dated: April 11, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection, Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, Maritime Administration.

[FR Doc. 03–9345 Filed 4–11–03; 2:48 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1454–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1454–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Fleming County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9190 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of March 14, 2003: Darke, Delaware, Harrison, Hocking, Licking, Montgomery, Perry, Union, and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

Vinton County for emergency protective measures (Category B) for a period of 48 hours (already designated for Public Assistance).

Athens, Belmont, Morgan, and Noble Counties for Public Assistance and emergency protective measures (Category B) for a period of 48 hours.

Monroe County for Public Assistance (already designated for emergency protective measures (Category B) for a period of 48 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9188 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Preble County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9189 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Braxton, Lewis, Logan, Monroe, and Putnam Counties for Individual Assistance (already designated for Public Assistance).

Harrison County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9191 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan: National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California

AGENCY: Bureau of Land Management, USDI; Forest Service, USDA.

ACTION: Notice of Availability (NOA) of the Draft Supplemental Environmental Impact Statement (DSEIS) for the Clarification of Language in the 1994 record of decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts within the range of the Northern Spotted Owl.

SUMMARY: The USDI Bureau of Land Management and the USDA Forest Service have prepared a DSEIS to consider an amendment of selected portions of the Aquatic Conservation Strategy (ACS) (part of the Northwest forest Plan) to clarify guidance intended to protect and restore watersheds. This amendment is needed because projects intended to achieve Northwest Forest Plan goals have been delayed or stopped due to misapplication of certain passages in the ACS. This DSEIS supplements the Northwest Forest Plan Final SEIS. It is not intended to replace or reconsider the plan as a whole, but

focuses on specific passages within the ACS.

DATES: Written comments on the DSEIS must be postmarked or otherwise delivered by 4:15 p.m. 90 days following the date the Environmental Protection Agency publishes the NOA and filing of the DSEIS in the **Federal Register**. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or 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 or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. No public meetings have been scheduled.

ADDRESSES: Send written comments to: ACS EIS, P.O. Box 221090, Salt Lake City, UT 84122–1090; FAX: (801) 517–1014 (please address fax to ''ACS EIS''); E-mail: acs *comments@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Joyce Casey; phone (503) 326–2430; E-mail: *jcasey01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Two alternatives are considered in this DSEIS. No action would not change existing language within the ACS. The proposed action (preferred alternative) would make limited changes to clarify how the agencies are to design projects to follow the ACS.

The proposed action would approve limited changes to language within the ACS. The ACS is an integral part of the Northwest Forest Plan. The ACS is intended to maintain and restore the ecological health of watersheds and aquatic ecosystems within the Northwest Forest Plan area. The ACS includes language that has been interpreted to establish an expectation that all projects must achieve all ACS objectives. These interpretations hinder Federal land managers' ability to plan and implement projects needed to achieve Northwest Forest Plan goals. The proposed action would amend the Northwest Forest Plan to clarify that:

- The proper scales for Federal land managers to evaluate progress toward achievement of the ACS objectives are the watershed and broader scales;
- No single project should be expected to achieve all ACS objectives;
- Decision makers must design projects to follow the ACS. Project records must contain evidence that projects comply with relevant Standards and Guidelines in sections C and D of attachment A in the Northwest Forest Plan record of decision. Project records must also demonstrate how the decision maker used relevant information from applicable watershed analysis to provide context for the design and assessment of the project.
- References to ACS objectives in the Standards and Guidelines in Sections C and D do not require that decision makers find that site-specific projects, in themselves, will fully attain ACS objectives.

The proposed action (preferred alternative) would retain all existing components of the ACS, including Riparian Reserves, Key Watersheds, watershed analysis, and watershed restoration. It would reinforce concepts about appropriate scales of analysis and the role of standards and guidelines. It would remove the expectation that all projects must achieve all ACS objectives, and would reinforce the role of watershed analysis in providing context for actions that may affect aquatic or riparian habitat.

Dated: April 9, 2003.

Michael C. Ash,

Deputy Regional Forester, Pacific Northwest Region.

[FR Doc. 03–9128 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Special Trustee Advisory Board, Notice of Initiation of the Nomination/Selection Process

AGENCY: Office of the Special Trustee for American Indians (OST), Interior.

ACTION: Call for nominations for membership to the Special Trustee for American Indians Advisory Board.

SUMMARY: Pub. L. 108–7, making further continuing appropriations for the fiscal year 2003, and for other purposes, became law on February 20, 2003. Section 133 of the General Provisions for the Department of the Interior directed the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, to appoint new members of the Special Trustee's Advisory Board within 90 days of enactment of Pub. L. 108–7. This notice initiates the process to select the new membership of that Board. Nominations for interested individuals meeting the specific criteria described in this notice for becoming a member of the Advisory Board should be submitted with the requested information within 30 days of publication of this Notice.

DATES: All nominations must be postmarked by 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Nominations and supporting documentation should be sent to: The Office of Special Trustee for American Indians; 1849 C Street, NW., Ste 5140; Washington, DC 20240, Attn: Richard Fitzgerald.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald (202) 208–4866 You can obtain information and a copy of the Notice for the Nomination/Selection process by contacting the following offices: OST 1849 C Street, NW., Ste 5140; Washington, DC 20240 or OST at 505 Marquette St, NW., Ste 800; Albuquerque, NM 87102; (505) 816–1313.

SUPPLEMENTARY INFORMATION: Pub. L. 108–7, making further continuing appropriations for the fiscal year 2003, and for other purposes became law on February 20, 2003. Section 133 of the General Provisions for the Department of the Interior directed the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, to appoint new members to the Special Trustee Advisory Board. The Office of the Special Trustee is now initiating the process to select the membership of that Board. Section 306 of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103–412; 25 U.S.C. 4046) requires the Special Trustee to establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board must consist of nine members which must meet the following criteria: five members representing trust fund account holders, including both tribal and Individual Indian Money accounts; two members having practical experience in trust fund and financial management; one member having practical experience in fiduciary investment management; and one member from academia having knowledge of general management of large organizations. Advisory board members serve a two year term; travel and per diem expenses are provided. Final selections will be made by and serve at the discretion of the Special Trustee for American Indians. Individuals who wish to serve as members of the advisory board must complete and submit the following information to this office within 30 days of publication of this Notice in the **Federal Register**:

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:

E. Home Phone;

F. Occupation/Title;

G. Qualifications (education including degrees, major field of study and/or training for I(2–4) or whether you are an individual or tribal account holder for I(1)):

H. Career Highlights (significant related experience; civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented):

I. Indicate Specific Area of Interest to be Represented from the following:

1. A representative from the trust fund account holders, including both tribal and Individual Indian Money accounts;

2. A representative having practical experience in trust fund and financial management;

3. A representative having practical experience in fiduciary investment management; or

4. A representative from academia having knowledge of general management of large organizations.

J. Attach a minimum of two Letters of Reference from interests or organizations represented.

K. Nominated by: Include Nominator's name, address and telephone number(s).

L. Date of nomination:

Groups may nominate more than one person. If nominating more than one nominee, please indicate your preferred order of appointment selection.

Dated: April 1, 2003.

Richard V. Fitzgerald,

Trust Policy Officer.

[FR Doc. 03–9125 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Churchill and Washoe Counties, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Decision and Availability of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision.

SUMMARY: This is a notice of decision and availability of the Record of Decision (ROD) for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision (Final CCP EIS), Churchill and Washoe Counties, Nevada. Pursuant to the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA; 40 CFR 1505.2) and the U.S. Fish and Wildlife Service's (Service) Comprehensive Conservation Plan policy, the Service issues this ROD upon consideration of the Final CCP EIS prepared for the proposed action to develop and implement a comprehensive conservation plan for the Stillwater National Wildlife Refuge Complex. The Final CCP EIS was released to the public on May 29, 2002. A Notice of Availability of the Final CCP EIS was published in the **Federal Register** on May 31, 2002 (67 FR 38142). The ROD, which documents the selection of the Preferred Alternative as presented in the Final CCP EIS, was signed by U.S. Fish and Wildlife Service California/Nevada Office Manager Steve Thompson, on April 2003. The determination was based on a thorough analysis of the environmental, social, and economic considerations presented in the Final CCP EIS.

FOR FURTHER INFORMATION CONTACT: Project Leader, Stillwater National Wildlife Refuge Complex, 1000 Auction Road, Fallon, Nevada 89406, (775) 423–5128. A copy of the ROD or Final CCP EIS may be obtained from the above address or by download from: *http://pacific.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: The following is a summary of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision.

The U.S. Fish and Wildlife Service (Service) began developing a comprehensive conservation plan (CCP) for the Stillwater National Wildlife Refuge Complex (NWRC) in early 1997. The Final Environmental Impact Statement for the Stillwater NWRC Comprehensive Conservation Plan and Boundary Revision (Final CCP EIS) identifies and evaluates five alternatives for managing the Stillwater NWRC for the next 15 years. Each alternative consists of two main parts: (1) A boundary revision for Stillwater National Wildlife Refuge (NWR), and (2) the framework of a CCP, including refuge goals, objectives, and strategies, for achieving the purposes for which each refuge was established and for contributing toward the mission of the National Wildlife Refuge System. The Stillwater NWRC currently includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, and Anaho Island NWR, which are located in west-central Nevada.

The Record of Decision (ROD) is a statement of the decision made, including how the decision responds to primary issues, other alternatives considered, public involvement in the decision making process, and the basis for the decision.

Decision

The U.S. Fish and Wildlife Service will implement Alternative E for the Stillwater NWRC, which was identified in the Final CCP EIS as the alternative that provides the best balance between satisfying the National Wildlife Refuge System and Service missions and purposes of Stillwater NWR and Anaho Island NWR and providing opportunities for compatible refuge uses. Alternative E also recognizes the need to protect cultural resources. Some guidelines and actions in Alternative E remain consistent with those presented in Alternative C of the Draft CCP EIS. Others were modified in the Final CCP EIS to respond to public comments and concerns. Alternative E, which is supported by the majority of the commenting public and endorsed by the Nevada Division of Wildlife and the Nevada Board of Wildlife Commissioners, represents the CCP which will guide Stillwater NWR and Anaho Island NWR management for the next 15 years.

Alternative E focuses on approximating natural habitat conditions as the primary means to conserve and manage the refuges' wildlife, restore their natural biological diversity, and fulfill international treaty obligations with respect to fish and wildlife, with the understanding that events occurring over the past 100 years have substantially altered habitat conditions. The needs of particular species, including species highlighted in regional conservation plans, may be used to adjust management practices where this is deemed necessary and within the general framework established by Alternative E. The following is a brief summary of key components.

Contingent on approval of the Stillwater NWRC Land Protection Plan proposed in the Final CCP EIS, Alternative E would expand the approved boundary of Stillwater NWR to include a majority of the lands that are now inside the Stillwater WMA and portions of Fallon NWR, as well as six

sections of land along the lower Carson River and 26 sections north of the existing Stillwater NWR. Major habitats proposed to be added to Stillwater NWR would be the lower Carson River and its delta marsh, the sand dunes along the southern edge of the Carson Sink, and the stabilized dunes and salt desert shrub habitat between the Carson River and Stillwater Marsh. The revised boundary of Stillwater NWR would exclude the northern portions of Fallon NWR and the western portions of the Stillwater WMA. Stillwater WMA would no longer be managed by the Service under an agreement with the Bureau of Reclamation. Although the size of Stillwater NWR would increase, the acreage of Federal lands managed primarily for wildlife in the Lahontan Valley would decline by about 25,517 acres. The most important lands with respect to refuge purposes and wetlands protection would be retained. Under this proposal, the approved boundary of Stillwater NWR would include about 172,254 acres, of which about 137,504 acres would be Federal. The acreage of non-Federal inholdings within the boundaries of Federal wildlife areas in the Lahontan Valley would decline by about 40 percent.

Some of these boundary revisions cannot be accomplished without Congressional action. Consistent with Public Law 101–618, the Service intends to recommend that Congress, through special legislation: (1) Revoke the wildlife reservation on Bureau of Reclamation lands known as Fallon NWR; (2) abolish the name Fallon NWR; and (3) establish primary Service jurisdiction on those portions of Stillwater WMA and the former Fallon NWR which the Service proposes to include in the revised Stillwater NWR boundary.

Anaho Island NWR will be managed as it has in the past, with no intent to conduct active habitat management. Habitat management on Stillwater NWR will focus on providing a variety of native wetland, riparian, and upland plant communities through the use of water management, integrated pest management, prescribed fire, and other tools described in the Final CCP EIS. A Habitat Management Plan will be developed concurrent with initial implementation of the CCP. A draft Integrated Pest Management Plan and an approved Fire Management Plan have already been prepared.

Water management on Stillwater NWR will focus on providing spring migration and breeding habitat. However, up to 25% of the refuge's acquired water rights will be reserved for fall delivery (October-November) to provide habitat for fall waterbird migration and for wildlife dependent recreational uses. A primary objective of water management will be to reduce salinity in wetland units located at higher elevations or in specified flow corridors to provide conditions suitable for native plant restoration.

Livestock grazing and muskrat trapping will no longer be allowed as commercial uses but can be used as habitat management tools to meet specific habitat objectives. Livestock grazing will no longer be allowed in uplands, which should aid native vegetation establishment in upland habitats. Farming will be allowed on up to 300 acres, but will require water from other sources to facilitate agricultural production. Compatibility determinations have been prepared that describe the stipulations associated with implementation of these management activities.

Priority wildlife dependent recreational uses found compatible on Stillwater NWR include hunting, wildlife observation and photography, and environmental education and interpretation. Additionally, horseback riding was found to be compatible. Anaho Island NWR will remain closed to all public access.

Hunting will be allowed on Stillwater NWR during all State of Nevada designated seasons for big game, upland game, and migratory birds. All wetland units historically open to waterfowl hunting will remain open. Boat access options will vary depending on wetland unit, but will include areas designated for non-motorized boats, motorized boats, or air-thrust boats, as well as areas designated for no boat use.

Options for wildlife observation and photography at Stillwater NWR will be enhanced through development of a ten-mile auto tour loop within the existing sanctuary, and trails at Stillwater Point Reservoir, Timber Lakes, and the lower Carson River. Outdoor education and interpretation will be promoted through development of a visitor center and outdoor education site along the ten-mile tour loop. A sign plan is currently being developed to evaluate interpretive opportunities along refuge roads and trails.

Alternative E, selected for implementation, represents the best balance between refuge purposes, resource conservation, and compatible wildlife dependent public use.

Other Alternatives Considered

The Draft CCP EIS and Final CCP EIS evaluated four other alternatives for the management of Stillwater NWRC. Under all alternatives, Anaho Island NWR would continue to be managed much as it has in the past for the protection of colonial nesting birds. The No Action Alternative (Alternative A) would retain the existing Stillwater NWR boundaries and baseline management as outlined in the 1987 Management Plan for Stillwater WMA and modified by the Service's water rights acquisition program. Alternative B would result in the lands within Stillwater WMA reverting back to U.S. Bureau of Reclamation management or other public land status. Management would focus on providing fall and winter habitat for waterfowl and opportunities for waterfowl hunting on Stillwater NWR, and breeding habitat for waterbirds on Fallon NWR. Under Alternative C, the Service would seek legislation to expand the Stillwater NWR boundary to include much of Stillwater WMA and Fallon NWR to conserve additional riparian and dune habitat. This alternative would emphasize the approximation of natural biological diversity with adjustments to enhance breeding habitat for waterbirds and fall and winter habitat for waterfowl, and would provide enhanced opportunities for wildlife observation and environmental education. Under Alternative D, legislation would also be sought to expand the Stillwater NWR boundary to include much of Stillwater WMA and Fallon NWR to conserve additional riparian and sand dune habitat. Management of Stillwater NWR would focus on restoring natural hydrologic patterns and other ecological processes. Visitor services management would focus on providing opportunities for wildlife observation and environmental education. These alternatives were not selected for implementation because they did not balance resource conservation goals with compatible public use as well as the selected alternative.

Public Involvement and Comments Received

Prior to release of the Final CCP EIS, the Service met with a variety of Federal agencies, the Nevada Division of Wildlife, local Native American Tribes, municipal governments, and several interest groups on a number of occasions, and held open houses to receive public comment. Seven planning updates were sent out to all on the mailing list. Fifty-four contributors provided 1,004 comments on the Draft CCP EIS. A complete history of the public involvement, comment period, and Service responses to comments are included in the Final CCP EIS.

The Service received only two comments following the distribution of

the Final CCP EIS. Mr. John T. Moran, Jr., Chairman of the State of Nevada Board of Wildlife Commissioners (Commission), sent a letter confirming the Commission's unanimous decision to support the Service's selection and adoption of preferred Alternative E in the Final CCP EIS, provided no administrative changes to the intent of Alternative E as written were made. Comments on the Draft CCP EIS submitted by the Nevada Division of Wildlife sponsored working group were considered during development of the preferred Alternative E in the Final CCP EIS, and were incorporated into the Service's revised position as presented in Planning Update #7 (July 2001) for public review. No substantive changes were made from the information presented in the update, and this information was used to develop the visitor services, habitat management, and wildlife management options presented in Alternative E.

Ms. Lisa B. Hanf, Manager of the Federal Activities Office, U.S. Environmental Protection Agency (EPA), Region IX, submitted comments in support of the Service's decision to select preferred Alternative E for implementation and expressed appreciation for the Service's response to their comments regarding the Draft CCP EIS. Ms. Hanf further noted that EPA was currently working with the Service, U.S. Geological Survey, and the University of Nevada, Reno to identify measures that will reduce mercury transport to the wetlands, and appreciated the Service's attempts to identify potential mitigation strategies to improve the quality of water entering the wetlands. The Service is committed to improving the quality of water entering the wetlands and, as noted, has identified a number of mitigation strategies which could be used. The Service appreciates the opportunity to continue working closely with EPA and other entities actively involved in restoring the environmental health of wetland habitats at Stillwater NWR.

Churchill County Chair Gwen Washburn submitted comments reiterating the County's opposition to the refuge's proposed water management program and the proposed boundary revisions due to perceived impacts to the local economy, County and private inholdings and ground water resources. The County provided similar comments on the draft CCP/EIS and the Service provided detailed responses to the County's comments in the Final CCP/EIS. The Service has provided clarifications in response to Churchill County comments on the Final CCP/EIS under separate letter. No new information was received that would alter the conclusions contained in the Final CCP/EIS.

Environmentally Preferable Alternative

The alternative which causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources is Alternative C, Option 1.

The focus of Alternative C, Option 1, was to manage the Stillwater NWR by using water management to simulate natural hydrologic processes to restore and maintain natural biological diversity. Another primary element was to increase the balance between the needs of wildlife resources and the recreational needs of a rapidly expanding local and regional population base, while providing equal emphasis to priority wildlife-dependent recreational uses. Additional sanctuary would have been provided in the area currently open to public use and access would have been restricted to open roads with vehicle pullouts. Boat access during waterfowl hunting season would have been restricted to 15 horsepower outboard motor boats with a 5 miles per hour restriction on speed, and a no boating designation would have been applied to some wetland units. Alternative C, Option 1, did not represent the best balance between resource conservation and public use when compared to Alternative E.

Findings and Basis for Decision

Based upon review and careful consideration of the impacts identified in the Final CCP EIS; results of the various studies and surveys conducted in conjunction with the Draft and Final CCP EIS; public comments received throughout the process including comments on the Draft and Final CCP EIS; and other relevant factors, including the purposes for each refuge established pursuant to Public Law 101–618 (104 Stat. 3289), and other statutory and regulatory guidance; the Service finds that:

(1) Alternative E consists of the components, programs, and facilities described above.

(2) Alternative E, as it is described in the Final CCP EIS for the Stillwater National Wildlife Refuge Complex, provides the best balance between accomplishing the purposes for which Stillwater NWR and Anaho Island NWR and statutory mission of the Service to provide long-term protection of the Refuges' resources and allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. Alternative E accomplishes identified management goals and desired future conditions.

(3) Alternative E represents the best balance between provision of habitat restoration, public access and recreation, and other programs, and public and agency concerns identified during the public participation process.

(4) Based on an Intra-Service Section 7 evaluation, no state or federally listed endangered or threatened species or their critical habitats are known to be adversely affected by Alternative E. Implementation of the decision will avoid significant adverse impacts on wetlands and is not likely to adversely affect any endangered or threatened species, or result in destruction or adverse modification of critical habitat of such species. The Service has determined that implementation of Alternative E will result in a beneficial effect to bald eagle, and is not likely to adversely affect threatened Lahontan cutthroat trout or endangered cui-ui.

(5) No historic properties listed in or eligible for listing in the National Register of Historic Places are known to be affected by the plan.

(6) The requirements of NEPA and the implementing regulations (40 CFR Parts 1500–1508) have been satisfied.

Measures To Minimize Environmental Harm

Public concerns, potential impacts, and methods or stipulations to mitigate those impacts are addressed in the Final CCP EIS. All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. Implementation of the selected action will avoid any adverse impacts on wetlands and any endangered or threatened species, and will not result in the destruction or adverse modification of critical habitat of such species. Mitigation measures, called stipulations, that will be followed are documented in Appendix O, Compatibility Determinations, in the Final CCP EIS. These stipulations make public and other uses compatible with the purpose for which the refuge was established. The referenced compatibility stipulations ensure that all practical means to avoid or minimize environmental harm from implementation of Alternative E have been adopted.

The Service has considered the environmental and relevant concerns presented by agencies, organizations and individuals on the proposed action to develop and implement a comprehensive conservation plan and boundary revision for the Stillwater

National Wildlife Refuge Complex. I have decided to implement Alternative E, the Service's preferred alternative. The ROD documents the written facts and conclusions relied upon in reaching this decision.

Dated: April 7, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–9110 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–934–5700; COC65193 & COC65194]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease/s, COC 65193 & COC 65194 for lands in Moffat County, Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease/s as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and Bureau of Land Management is proposing to reinstate lease/s COC 65193 & COC 65194 effective September 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Chief, Fluid Minerals Adjudication.

[FR Doc. 03–9124 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–03–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, (775) 861–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on January 17, 2003:

The supplemental plat showing a correction to the lotting in the NE¼NE¼ of section 6, Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada, was accepted January 16, 2003.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on February 7, 2003:

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and a portion of Mineral Survey No. 4518, and the subdivision of section 3 and a metes-and-bounds survey in section 3, Township 23 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 805, was accepted February 7, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and the City of Henderson, Nevada.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on March 26, 2003:

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivision-of-section lines of section 24 and a metes-and-bounds survey in section 24, and the survey of Lots 4 and 5 in section 24, Township 19 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 808, was accepted March 25, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and the City of Las Vegas, Nevada.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: April 8, 2003.

Robert M. Scruggs,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 03–9117 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 251, ''Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by May 15, 2003.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0048), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0048 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. The MMS uses information collected to understand the G&G characteristics of oil- and gas-bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion, annually, or as specified in permits.

Estimated Number and Description of Respondents: Approximately 150 Federal OCS permittees or notice filers.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 8,272 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
251.4(a), (b); 251.5(a), (b), (d); 251.6; Permit Forms.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests.	6	148 Applications	888
251.4(b); 251.5(c), (d); 251.6.	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6	2 Notices	12
251.6(b); 251.7(b)(5)(iii)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.)	1	1 Notice	1
251.7	Submit information on test drilling activities under a permit, including form MMS–123.	Burden included under 30 CFR 250.201, 250.203 and Form MMS–123 (1010–0049 and 1010–0044)		0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.)	1	1 Agreement	1
251.7(d)	Submit bond on deep stratigraphic test	Burden included under 30 CFR part 256 (1010–0006)		0
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.)	1	1 Request	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	8	150 × 4 Reports = 600	4,800
251.9(c)	Notify MMS to relinquish a permit	½	8 Notices	4
251.10(c)	File appeals	Burden included under 1010–0121		0

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
251.11; 251.12	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4	50 Respondents × 2 Submissions = 100.	400
251.13	Request reimbursement for certain costs associated with reproducing data/information.	20	50 Respondents × 2 Submissions = 100.	2,000
251.14(a)	Submit comments on MMS intent to disclose data/info. to the public.	1	1 Comment	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/info. to an independent contractor/agent.	1	1 Comment	1
251.14(c)(4)	Contractor/agent submit written commitment not to sell, trade, license, or disclose data/info. without MMS consent.	1	1 Commitment	1
251.1 to 251.14	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2	1 Request	2
Permit Forms (Form MMS–327).	Request extension of permit time period	1	10 Extensions	10
Permit Forms (Form MMS–327).	Retain G&G data/information for 10 years and make available to MMS upon request.	1	150 Recordkeepers	150
Total Hour Burden			1,125 Responses	8,272

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on November 6, 2002, we published a **Federal Register** notice (67 FR 67643) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 251 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 15, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 4, 2003.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–9139 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Release of an Environmental Assessment Document for the Placement of Wireless Telecommunication Facilities

AGENCY: Catoctin Mountain Park, National Park Service, Interior.

ACTION: Notice of document availability.

SUMMARY: Catoctin Mountain Park will release for public review, the Environmental Assessment document for the application regarding the placement of wireless telecommunication facilities (WTF). On May 15, 2002, Verizon Wireless submitted an application for locating four wireless telecommunication facilities (WTF), each consisting of a monopole, attached antennas, associated cables, and a support equipment building at up to four different locations within Catoctin Mountain Park, a unit of the National Park Service. It is the responsibility of

Catoctin Mountain Park and the purpose of the Environmental Assessment to evaluate the impacts by the proposed wireless telecommunication facilities on the park environs. The EA addresses several alternatives for placement of the WTF inside and outside park property. Two public information meetings will be held on April 29, 2003 and May 1, 2003.

DATES: Environmental Assessment release date—April 18, 2003.

Document Availability: The Environmental Assessment document will be available for public review at Catoctin Mountain Park headquarters located at 6602 Foxville Road, Thurmont Maryland, at Washington County Library (Hagerstown and Smithsburg branches) and Frederick County Library (Frederick and Thurmont branches) and online at the Catoctin Mountain Park's Web site *http://www.nps.gov/cato.*

FOR FURTHER INFORMATION CONTACT: Scott Bell, Environmental Protection Specialist, 301/416–0536.

Dated: April 7, 2003.

J. Mel Poole,

Superintendent, Catoctin Mountain Park.

[FR Doc. 03–9213 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR), Recreation Use Data Report, OMB No. 1006–0002, 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 collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 15, 2003.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: Ms. Mollie Buckey, Office of Policy, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Ms. Mollie Buckey at (202) 513–0600.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Title: Recreation Use Data Report.

OMB No.: Reinstatement of OMB No. 1006–0002.

Summary: Reclamation will collect recreation and concession information in support of existing public laws, financial reporting requirements, and Reclamation's mission. The information will further Reclamation's ability to evaluate program and management effectiveness of existing recreation and concessionaire resources and facilities. It will ensure the accuracy and completeness of information about recreation opportunities on Reclamation project lands in the 17 Western States and validate public use of managed recreation resources.

Description of respondents: The information collection primarily affects other Federal agencies, State, local, or tribal governments or agencies who manage Reclamation's recreation resources and facilities; and for-profit concessionaires, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Frequency: Annually.

Form No. 7–2534, Managing Partners (Including Sites Managed by Reclamation)

Estimated number of respondents: 352.

Frequency of response: Initial response; updated annually if changes are made.

Estimated time for each response: 2 hours.

Total estimated annual reporting burden hours: 704.

Form No. 7–2535, Concessionaires

Estimated number of respondents: 225.

Frequency of response: Initial response; updated annually if changes are made.

Estimated time for each response: 2 hours.

Total estimated annual reporting burden hours: 450.

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. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 27, 2002 (67 FR 79146). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: February 21, 2003.

Wayne O. Deason,

Acting Director, Office of Program and Policy Services.

[FR Doc. 03–9136 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 2002, Chattem Chemicals, Inc., 3801 St.

Elmo Avenue, Building 18 Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
4-Methoxyamphetamine (7411)	I
2,5-Dimethoxyamphetamine (7396).	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Methylphenidate (1724)	II
Secobarbital (2315)	II
Meperidine (9230)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Dextropropoxyphene (9273)	II

The firm plans to bulk manufacture the listed controlled substances to produce products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD), and must be filed no later than 60 days from publication.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9228 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 25, 2002, Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application by renewal, and on March 5, 2003, by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of Schedule II of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	II
Methamphetamine (1105)	II
Amphetamine (1100)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Fentanyl (9801)	II

The firm plans to produce bulk products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 16, 2003.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9227 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated June 7, 2002, and published in the **Federal Register** on June 20, 2002 (67 FR 42060), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040) and Poppy Straw (9650) basic classes of controlled substances listed in Schedule II.

The firm plans to import the controlled substances to manufacture bulk pharmaceutical controlled substances and non-controlled substance flavor extract.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Penick corporation to import these controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Penick Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security system, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34 the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9230 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 20, 2002, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, MO 63021–4500, made application to the Drug Enforcement Administration to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled. Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file

written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD), and must be filed no later than May 15, 2003. This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9229 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,528]

Celestica Corporation Midwest Campus Including Leased Workers of Adecco Staffing Services, Rochester, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2003, applicable to workers of Celestica Corporation, Midwest Campus, Rochester, Minnesota. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Adecco Staffing Services were employed at the Midwest Campus of Celestica Corporation to produce electronic cards at the Rochester, Minnesota location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Staffing Services working at Celestica Corporation, Midwest Campus, Rochester, Minnesota.

The intent of the Department's certification is to include all workers of Celestica Corporation, Midwest Campus who were adversely affected by the shift in production to Canada.

The amended notice applicable to TA–W–50,528 is hereby issued as follows:

All workers of Celestica Corporation, Midwest Campus, Rochester, Minnesota, and leased workers of Adecco Staffing Services, Rochester, Minnesota producing electronic cards at Celestica Corporation, Midwest Campus, Rochester, Minnesota, who became totally or partially separated from employment on or after January 7, 2002, through January 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 8th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9150 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,980]

Dyna-Craft Industries, Inc, Including Temporary Workers of Adecco, Murrysville, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 6, 2002, applicable to workers of Dyna-Craft Industries, Inc., Murrysville, Pennsylvania. The notice was published in the **Federal Register** on September 27, 2002 (67 FR 61161).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Adecco were working at Dyna-Craft Industries, Inc. to produce stamped metal frames for semiconductors at the Murrysville, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Adecco, Murrysville, Pennsylvania working at Dyna-Craft Industries, Inc., Murrysville, Pennsylvania.

The intent of the Department's certification is to include all workers of Dyna-Craft Industries, Inc. who were adversely affected by the shift in production to Malaysia.

The amended notice applicable to TA–W–40,980 is hereby issued as follows:

All workers of Dyna-Craft Industries, Inc., Murrysville, Pennsylvania including temporary workers of Adecco, Murrysville, Pennsylvania engaged in employment related to the production of stamped metal frames for semiconductors at Dyna-Craft Industries, Inc., Murrysville, Pennsylvania, who became totally or partially separated from employment on or after January 20, 2001, through September 6, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9144 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,059]

Flowserve, Williamsport, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 18, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 19, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11409).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Flowserve, Williamsport, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

The petitioners allege that they are import impacted because their company's contract with a foreign customer ''specifies that 50% of the contract work will be done at (foreign) facilities.'' Further, the petitioners note that Flowserve is required to buy valves and materials from foreign vendors and re-sell them to their foreign customer ''thus taking work away from Williamsport.''

Contact with a company official confirmed that all production for this customer was exclusively for export purposes.

As trade adjustment assistance is concerned exclusively with whether imports impact layoffs of petitioning worker groups, the above-mentioned allegations regarding agreements between the subject firm and their foreign customer base are irrelevant.

The petitioners list several Flowserve affiliates that have been certified for trade adjustment assistance due to import impact, and suggest that, as a result, the petitioning worker group should be equally eligible.

In fact, all of the facilities listed by the petitioners were certified due to increased imports from the company of products like or directly competitive with those produced at the certified facilities. In the case of the subject firm, sales and production were relatively stable during the investigative period and any declines immediately prior to plant closure corresponded with a shift of production to an affiliated domestic facility. There was no evidence of import impact; as has been established above, the only foreign production impact allegations did not concern imports.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 8th day of April, 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9148 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,016]

Laird Techonolgies, Delaware Watergap, PA; Notice of Negative Determination on Reconsideration

By application of February 11, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 3, 2003, and will soon be published in the **Federal Register**.

The petition for the workers of Laird Technologies, Delaware Watergap, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported metal stampings.

The petitioner states that the Department did not address allegations indicated in the petition of the subject firm as a ''secondarily'' affected firm. The petitioner further states that a list of trade certified firms that were also subject firm customers was attached to the petition.

Upon review of the original investigation, it appears that the Department overlooked the petitioners' assertion that they acted as an upstream supplier to firms listed on an attached page that were allegedly trade certified. A company official was contacted in regard to this list of customers in order to establish which facility locations may have been customers of the subject firm in the relevant period, and the amount of business that these customers accounted for at the subject firm. Of the listed firms that were revealed as trade certified, the customer sales data provided by the company official revealed that these customers cumulatively accounted for a negligible amount of the customer base, and thus did not contribute to layoffs at the subject firm.

Furthermore, as established in the original investigation, the preponderance in sales, production and employment declines are attributed to the subject firm's shifting a portion of production that services the export market, and therefore is unrelated to import impact.

In conclusion, the ''upstream supplier'' group eligibility requirement of section 222(b) of the Trade Act of 1974, as amended, was not met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Laird Technologies, Delaware Watergap, Pennsylvania.

Signed at Washington, DC this 2nd day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9147 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,588]

Murray Engineering, Inc., Complete Design Service, Flint, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application received on February 19, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan was signed on February 5, 2003, and published in the **Federal Register** on February 24, 2003 (68 FR 8620).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Murray Engineering, Inc., Complete Design Service, Flint, Michigan engaged in activities related to industrial design and engineering services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that their services should be considered production because it involves a ''tangible drawing essential and integral to the making or building of a product.''

The engineering drawings and schematics prepared by subject firm workers services are not considered production within the meaning of section 222(3) of the Act.

The petitioner also asserts that the Department may be misled by the subject firm's name into thinking that there is not a tangible product involved, but states that subject firm workers produce ''design product on paper.''

Electronically generated information does not constitute production within the meaning of the Trade Act, and the fact that this information is generated on paper is irrelevant to worker group eligibility for trade adjustment assistance.

Finally, the petitioner appears to assert that the companies that produced the machines designed by the subject firm were certified and questions whether the Department has ''discriminated'' against the subject firm ''because of a company name.''

The subject firm does not produce the same product as its customers, nor do the subject firm workers produce a component that is integrated into further production by its customers. Thus, the issue of whether the subject firm's customers are certified or not is irrelevant in context with the petitioning worker group's eligibility for TAA. The design services produced by the subject firm do not constitute production within the meaning of section 222(3) of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 31st day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9151 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,284]

Newell Rubbermaid Corporation, Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Division, Bulldog Hardware Division, Ogdenburg, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 2002, applicable to workers of Newell Rubbermaid Corp., Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, New York. The notice was published in the **Federal Register** on January 9, 2003 (68 FR 1200).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hardware items such as nuts, bolts and screws.

New information shows that some workers separated from employment at the subject firm had their wages reported under separate unemployment insurance (UI) tax accounts for Newell Window Furnishings and Newell Operating Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Newell Rubbermaid Corp., Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Div., and Bulldog Hardware Div., all in Ogdenburg, New York who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,284 is hereby issued as follows:

All workers of Newell Rubbermaid Corp., Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, New York, who became totally or partially separated from employment on or after November 27, 2001, through December 19, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9149 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,934 and TA–W–50,934A]

Shadowline, Incorporated, Morganton, North Carolina and Shadowline, Incorporated, Boone, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 2003, applicable to workers of Shadowline, Incorporated, Morganton, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced lingerie. Information contained in the record shows that the company intended workers in Boone, North Carolina to be included in the certification. The workers at both North Carolina locations are considered by the company as one worker group. Data collected from the company official were for both locations.

It is the Department's intent to include all workers of Shadowline, Incorporated, adversely affected by increased imports. Accordingly, the Department is amending the certification to include all workers of

Shadowline, Incorporated, located in Boone, North Carolina.

The amended notice applicable to TA–W–50,934 is hereby issued as follows:

All workers of Shadowline, Incorporated, Morganton, North Carolina (TA–W–50,934) and Boone, North Carolina (TA–W–50,934A), who became totally or partially separated from employment on or after February 11, 2002, through March 10, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 31st day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9152 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,918]

Unilever Best Foods North America, Conopco, Santa Cruz, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 1, 2002, applicable to workers of Unilever Best Foods North America, Santa Cruz, California. The notice was published in the **Federal Register** on October 22, 2002 (67 FR 64923).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of packaged tea, including black tea and herbal tea.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Conopco.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Unilever Best Foods North America, Santa Cruz, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,918 is hereby issued as follows:

All workers of Unilever Best Foods North America, Conopco, Santa Cruz, California, who became totally or partially separated from employment on or after July 24, 2001, through October 1, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9146 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,208 and TA–W–41, 208A]

Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line, Grand Prairie, TX; Valeo Climate Control, USA–2 Division, Aluminum Tubing Line, Grand Prairie, TX; Notice of Revised Determination on Reconsideration

By letter postmarked October 30, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on September 27, 2002, based on the finding that imports of air conditioning condensers and aluminum tubing did not contribute importantly to worker separations at the Grand Prairie plant. The denial notice was published in the **Federal Register** on October 22, 2002 (67 FR 64922).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the company began importing a significant portion of competitive condensers in the relevant period. Further, as established in the original investigation, a significant portion of tubing produced at the subject firm was integrated into the production of condensers.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line, and the Aluminum Tubing Line, Grand Prairie, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line (TA–W–41,208), and the Aluminum Tubing Line (TA–W–41,208A), Grand Prairie, Texas, who became totally or partially separated from employment on or after March 1, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 2nd day of April 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9145 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 16, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington,

DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923 (b) and 20 CFR 725.544 (c), and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, Black Lung and FECA would have little basis to decide on collection proceedings. This information collection is currently approved for use through October 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility under the law to resolve overpayments under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Affected Public: Individuals or households.

Total Respondents: 4,500.

Total Responses: 4,500.

Time per Response: 45–75 minutes, average 1 hour.

Frequency: On occasion.

Estimated Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,800.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 8, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–9142 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Consumer Price Index Housing Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before June 16, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (See Addresses section).

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Price Index (CPI) is the timeliest instrument compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of Government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

This request addresses the continuation of the current Housing sample collection, and new construction

units added yearly. The Housing sample continues utilizing Computer-Assisted Data Collection (CADC) technology. Field representatives use hand-held pen computers and electronically transmit collected data back to Washington, DC.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Housing Survey.

OMB Number: 1220–0163.

Affected Public: Individuals or households; business or other for-profit.

Total Respondents: 36,996.

Frequency: Semi-annually.

Total Responses: 62,942.

Average Time Per Response: 6 minutes.

Estimated Total Burden Hours: 6,581.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 3rd day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–9143 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309–OM & 72–30–OM; ASLBP No. 03–806–01–OM]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Notice of Reconstitution of Atomic Safety and Licensing Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board in this proceeding, with the above-identified docket number, is hereby reconstituted by appointing Administrative Judge G. Paul Bollwerk, III, in place of Administrative Judge Thomas D. Murphy.

As reconstituted, the Licensing Board is comprised of the following administrative judges:

Ann M. Young, Chair,
Dr. Richard F. Cole,
G. Paul Bollwerk, III.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701. The address of the new member is: G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Rockville, Maryland, this 9th day of April 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–9198 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Sequoyah Fuels Corp.; Notice of Receipt of Amendment Request and Opportunity To Request a Hearing

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated January 28, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010, to address clean up and reclamation of the SFC site.

The SFC facility, located near Gore, Oklahoma, operated from 1970 to 1993, converting uranium oxide (yellowcake) to uranium hexaflouride, a step in the production of nuclear reactor fuel. From 1987 to 1993, the facility was also used to convert depleted uranium hexaflouride to uranium tetraflouride. The facility is currently licensed only to possess radioactive material. Originally, the license only permitted possession of source material. However, in a Staff Requirements Memorandum to SECY–02–0095, dated July 25, 2002, the Commission concluded that some of the waste at the SFC site could properly be classified as byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954 as amended (AEA).

In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material.

In its reclamation plan, SFC proposes to build a disposal cell on the site and put the radioactive waste in that cell. The cell is designed to meet the requirements, in 10 CFR part 40, appendix A, for disposal of 11e.(2) byproduct material. SFC also requested permission to dispose of source material wastes in the cell, under the guidance in Attachment 1 to NRC Regulatory Issue Summary 2000–23 (November 30, 2000).

The staff will review SFC's request for conformance with 10 CFR Parts 20 and 40, using NUREG–1620, ''Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act'' and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also 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.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the

Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

The application for the license amendment and the request to revise the License Application are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions with respect to this action should be referred to Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 8th day of April, 2003.

For the Nuclear Regulatory Commission.

Lidia Roché,

Acting Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–9197 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of April 14, 21, 28, May 5, 12, 19, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of April 14, 2003

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.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m.—Briefing on results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 19, 2003—Tentative

There are no meetings scheduled for the Week of May 19, 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 4–0 on April 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on April 9, and on less than one week's notice to the public.

By a vote of 4–0 on April 8 & 9, the Commission determined pursuant to U.S. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on April 11, 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: April 10, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–9311 Filed 4–11–03; 11:24 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 April 4, 2003, through April 17, 2003. The last biweekly notice was published on April 1, 2003, (68 FR 15756).

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 15, 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, 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.* 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.*

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1 (Fermi 1), Monroe County, Michigan

Date of amendment request: January 28, 2003, (Reference NRC–03–0011).

Description of amendment request: The proposed amendment will revise the Technical Specifications by:

1. Section A.1, 2, 4, 8, C.1, D, E.1, H.3.b, I.5, I.7b, I.9.d have been previously deleted and the word ''Deleted'' used as a place marker to alleviate the need to renumber all sections. This request proposes to remove these sections and renumber as appropriate.

2. Sections C.2 and E.2 cover the Reactor Building and Fuel and Repair Building Drains. This request proposes to delete the requirements in sections C.2 and E.2, which is all that remains in sections C and E. Section C, Reactor Building, and E, Fuel and Repair Building, will be deleted in their entirety.

3. Added, ''Monitoring or sampling for tritium will not be required if the sample results have determined that tritium is not present during a given evolution'' in Section F. This is to clarify the intent of ''During other evolutions resulting in radioactive gaseous effluents, the effluents shall be monitored or sampled and analyzed for tritium and particulates.''

4. Section H.1 and 2 cover alarms, including surveillances, allowed out of service time, compensatory measures and alarm readouts for alarms associated with water intrusion. This request proposed to delete these sections on water intrusion alarms.

5. Sections H.3 and 4 cover required inspections of the facility. This request proposes to delete the requirement for radiation surveillance of the steam cleaning room access plug, which is Item c. of H.3, Fuel and Repair Building.

This proposal adds the words ''(until made inactive)'' to H.3 Reactor Building Item c. This request also proposes to delete recording liquid waste tank levels, which is Item c. in Section H.4.

6. Table H–1 lists the required Fermi 1 alarms and their alarm points. Only water intrusion alarms are currently covered in this table. This request proposed to delete this alarm table.

7. Editorial changes are included in this proposed request. In section I.2, the word ''employes'' will be changed to ''employees''. In Section I.2.b the word ''He'' will be changed to ''The Health Physicist''. In Section I.7 the word ''his'' will be removed from the following sentence, ''The Custodian may temporarily change a procedure by Written Order following his determination that the change does not constitute a significant increase in the hazards associated with the operation.'' In Section I.9.h the word ''usual'' will be changed to ''unusual''.

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 using the standards in 10 CFR 50.92(c). The licensee's analysis is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

Removing the requirements for water intrusion monitoring, liquid waste tanks level recording, and building drains will not significantly increase the possibility of an accident as long as the probability of an uncontrolled sodium and water reaction is not significantly increased. This is accomplished by the amount of volume of the area in which the sodium is present where water intrusion is currently monitored. It would take a long period of time for the water intrusion to reach the sodium piping and this would still not increase the probability as long as the piping is not breached. When the piping is breached during the sodium abatement process, it will be completed under controlled conditions. Removal of the instrumentation may delay the discovery of a liquid spill but cannot affect the probability of the spill since it is only instrumentation. The consequences of an accident will not be increased because the previously analyzed accident accounts for all of the radioactive material contained within the liquid waste tanks and primary sodium to be released. This change will not increase the amount of radioactive material. The editorial changes, steam cleaning room plug radiation survey deletion, or the clarification made to gaseous effluent monitoring for tritium will not significantly increase the probability or consequences of an accident, because they have no impact on how any systems are operated or what systems are removed from the facility.

2. The proposed change does not create the possibility of a new or different accident from any previously evaluated.

Removing the requirements for water intrusion monitoring and liquid waste tanks level recording will not create the possibility of a new or different accident from any previously evaluated. The accidents these systems monitor for have already been analyzed for, including a release of the radioactive sodium during a sodium and water reaction and the release of the entire contents of the liquid waste tanks. Removing the building drains requirements will not cause a different type of accident since the drains only affect where liquid flows. Where liquid flows cannot cause an accident unless the drains place water where it does not belong. This can only impact a liquid water release or sodium accident. The editorial changes, survey deletion, and the clarification made to gaseous effluent monitoring for tritium will not create the possibility of a new or different accident, since they do not introduce any new modes of operation of facility equipment.

3. The proposed change does not involve a significant reduction in a margin of safety.

The removal of the requirements for water intrusion monitoring, liquid waste tanks level recording, and building drains may slightly reduce the margin of safety, but not significantly. Removing them does not in itself introduce water into the sodium containing systems. Nor does removing them allow for an unmonitored discharge of any radioactive effluents. Discharges are still controlled by Section C of the proposed amendment to the Technical Specifications. The decommissioning project is now ongoing and the facility no longer normally vacant as it was during the initial time following facility retirement. In addition, the calculated consequences of releasing the radioactive material are small and within 10 CFR 20 limits. The editorial changes or survey deletion will not significantly reduce a margin of safety, because the survey is of a floor plug that has been removed from the entrance to an area and has no function. The

clarification made to gaseous effluent monitoring for tritium will not significantly reduce a margin of safety since tritium monitoring is still required for evolutions involving sodium processing and pipe cutting, and during other activities, unless results have determined tritium is not present during a given evolution.

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, NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esquire, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

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 amendment request: November 25, 2002.

Description of amendment request: The amendments would revise the Technical Specifications (TS) for the Ventilation Filter Testing Program (VFTP), Annulus Ventilation System (AVS), Auxiliary Building Filtered Ventilation Exhaust System (ABFVES), Fuel Handling Ventilation Exhaust System (FHVES), and Control Room Area Ventilation System (CRAVS), and containment penetrations.

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:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

First Standard

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This licensee amendment request proposes amendments to the system TS and/or Bases and/or VFTP TS requirements for the AVS, ABFVES, FHVES, and CRAVS. It also proposes amendments to the TS and Bases for Containment Penetrations. The AVS is in standby during normal plant operations and operates only following a Safety Injection signal or during a test. It is not an accident initiator. The ABFVES is in operation during normal plant operations. However, the ABFVES is not used in direct support of any phase of power generation or conversion or transmission, shutdown cooling, fuel handling operations, or processing of radioactive fluids. Therefore, it is not an accident initiator. The FHVES is utilized to support fuel handling operations when moving recently irradiated fuel. It is not an accident initiator. The CRAVS operates during normal plant operations. However, it is not an accident initiator (the CRAVS being defined so as to exclude equipment that maintains an appropriately low temperature in the control room). The status of containment penetrations is required to be controlled so as to minimize the consequences of a fuel handling accident or a weir gate drop accident. The containment penetrations by themselves are not accident initiators. No accident initiators are associated with the changes proposed in this license amendment request. For these reasons, operation of the facility in accordance with this proposed amendment does not involve a significant increase in the probability of any accident previously evaluated.

In support of the proposed amendment, an analysis has been performed to determine the radiological consequences of the design basis LOCA [loss-of-coolant accident] at Catawba Nuclear Station. The analysis made use of the Alternative Source Term (AST) methodology and in general conformed to the regulatory positions of Regulatory Guide 1.183, [''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' (ML003716792)

(Draft DG1081 Issued December 1999)] and the draft regulatory positions of DG–1111. Total Effective Dose Equivalent (TEDE) radiation doses at the Exclusion Area Boundary (EAB), boundary of the Low Population Zone (LPZ), and to the control room operators were calculated and found to be acceptable.

TEDE's have been estimated from the radiation doses with the current analysis (reported in the UFSAR [Updated Final Safety Analysis Report]) using the guidelines of Regulatory Guide 1.183 modified as reported in Appendix A of Attachment 3 [of the licensee's submittal dated November 25, 2002]. These TEDE's are compared to the limiting TEDE's from the proposed analysis as follows:

TEDE'S FOLLOWING THE DESIGN BASIS LOCA

Location	TEDE'S (Rem)	
	UFSAR	Proposed
EAB	9.95	7.21

TEDE'S FOLLOWING THE DESIGN BASIS LOCA—Continued

Location	TEDE'S (Rem)	
	UFSAR	Proposed
LPZ	1.90	3.97
Control Room	1.57	2.65

The new value for the control room TEDE radiation dose is higher than the TEDE radiation dose equivalent to the radiation doses currently reported in the UFSAR. However, the limiting control room TEDE radiation dose reported in this submittal is lower than the acceptance criterion by 47%. The new LPZ TEDE radiation dose is higher than the equivalent TEDE radiation dose currently represented. On the other hand, the margin to the acceptance criterion is 84%. The TEDE radiation doses newly computed at the EAB for the design basis LOCA is lower than the corresponding equivalent EAB TEDE radiation dose currently represented in the UFSAR. The margin in the EAB TEDE radiation dose to the guideline value is 71%. In all cases, there is significant margin between the newly calculated post-LOCA TEDE radiation doses and the corresponding regulatory guideline values. In the sense that the margins to the germane regulatory guideline values are still large, the new values of TEDE radiation doses are comparable to the equivalent TEDE associated with the post-LOCA radiation doses currently listed in the UFSAR. Therefore, the proposed amendment is determined to not result in a significant increase in accident consequences.

The changes proposed to the TS for Containment Penetrations are editorial in nature and will have no effect upon accident consequences.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant increase in any accident consequences. The changes to make the penetration values for Unit 2 consistent with Unit 1 for the AVS, ABFVES, and FHVES are acceptable because the appropriate safety factors as delineated in the applicable regulatory guideline documents are still maintained. The change to the flowrate specified for the ABFVES is consistent with the design basis operation of this system. Also, the editorial changes proposed to the VFTP TS will have no impact on any accidents.

Operation of the facility in accordance with the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

Second Standard

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed amendment does not involve addition, removal, or modification of any plant system, structure, or component. These changes will not affect the operation of any plant system, structure, or components as directed in plant procedures.

The analysis performed in support of this license amendment request, together with the analyses of the design basis fuel handling accident and weir gate drop reported in previously submitted and NRC approved license amendment requests, includes full scope implementation of AST methodology. This analysis does not represent any change in the post-accident operation of any plant system, structure, or component.

Operation of the facility in accordance with this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety?

Margin of safety is related to confidence in the ability of fission product barriers to perform their design functions following any of their design basis accidents. These barriers include the fuel cladding, the Reactor Coolant System, and the containment. The performance of these barriers either during normal plant operations or following an accident will not be affected by the changes associated with the license amendment request.

The AVS is associated with the containment fission product barrier. Its post-accident operation will not be affected by implementation of the amendment to its TS. The operation of the ABFVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the FHVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the CRAVS either during normal plant operations or following an accident will not be adversely affected by the proposed changes to its TS Bases. The operation of Containment Penetrations following an accident will not be adversely affected by the proposed change to its TS.

As noted, an analysis of radiological consequences of the design LOCA at Catawba Nuclear Station has been performed in support of this license amendment request. The design basis LOCA scenarios were selected based on extensive evaluations of Catawba, its design basis, and its anticipated response to a design basis LOCA. Credit was taken only for safety related systems, structures, and components in simulating the mitigation of radiological consequences of the LOCA. Limiting values were taken for performance characteristics of the Class 1E systems modeled in the analysis. The radiological consequences (TEDE radiation doses at the EAB, LPZ, and in the control room) are within the regulatory guideline values with significant margin.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant reduction in the margin of safety. These changes are supported by regulatory guidance documents, and are consistent with existing system operation. Also, the editorial changes proposed to the VFTP TS will not have any impact on safety.

Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: November 20, 2002, as supplemented January 21, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for REQUIRED ACTIONS requiring suspension of operations involving positive reactivity additions and various NOTES that preclude reduction in boron concentration. The proposed changes revise these REQUIRED ACTIONS and NOTES to limit the introduction of positive reactivity such that the required margin to criticality, the shutdown margin and refueling boron concentration limits will still be satisfied. The licensee stated that the changes are consistent with the Technical Specification Task Force (TSTF) traveler number 286, Revision 2. Associated changes are also proposed for the TS Bases. *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:

The following discussion is a summary of the evaluation of the change contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards are satisfied. A ''no significant hazards consideration'' is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed changes do not involve any physical alteration of plant systems, structures, or components. The proposed changes revise ACTIONS in the Catawba Nuclear Station (CNS) and McGuire Nuclear Station (MNS) Technical Specifications (TS) that require suspending operations involving positive reactivity additions and several Limiting Condition for Operation (LCO) Notes that preclude reduction in boron concentration. The change revises these ACTIONS and LCO Notes to limit the introduction of reactivity such that the required SHUTDOWN MARGIN (SDM) or refueling boron concentration will still be satisfied. The proposed change ensures that the reactivity condition [k_{eff}] specified in mode definition, the SDM of LCO 3.1.1 and minimum boron concentration requirements of LCO 3.9.1 are met. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the updated final safety analysis report (UFSAR) because the accident analysis assumptions and initial conditions will continue to be maintained.

Second Standard

The proposed changes do not involve any physical alteration of plant systems, structures, or components. The proposed changes, which allow positive reactivity additions that do not result in the SDM or the refueling boron concentration being exceeded, do not introduce new failure mechanisms for system structures, or components not already considered in the UFSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created because no new failure mechanisms or initiating events have been introduced.

Third Standard

The proposed changes do not involve a significant reduction in a margin of safety because the ability to make the reactor subcritical and maintain it subcritical during all operating conditions and modes of operation will be maintained. The margin of safety is defined by the SDM of LCO 3.1.1 and minimum boron concentration requirements of LCO 3.9.1. The proposed changes do not affect these operating restrictions and the margin of safety, which assures the ability to make and maintain the reactor subcritical, is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate an asymmetrical ice mass distribution within the ice condenser containment (ICC) by specifying revised safety analysis ice mass quantity requirements for three specific radial zones of the ice bed. Associated changes to the Bases were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation (Duke) has concluded that operation of Catawba Nuclear Station (CNS) Units 1 & 2, and McGuire Nuclear Station (MNS) Units 1 & 2, in accordance with the proposed changes to the Technical Specifications (TS) does not involve a significant hazards consideration. Duke's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The Proposed Change Does Not Involve a Significant Increase In The Probability or Consequences Of An Accident Previously Evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a high energy line break (HELB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. That is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant or Main Steam Systems. Since these proposed changes do not result in, or require, any physical change to the ice condenser that could introduce an interaction with the Reactor Coolant or Main Steam Systems, then there can be no change in the probability of an accident previously evaluated.

Regarding consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the containment sub-compartment and containment vessel pressure immediately following the initiation of a LOCA or HELB. Conservative sub-compartment and containment pressure analysis [based on the proposed changes] shows these criteria will be met if the total ice mass within the ice bed is maintained in accordance with the DBA [Design Basis Accident] analysis; therefore, the proposed TS SR [Surveillance Requirement] changes of these requirements will not increase the consequences of any accident previously evaluated.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create The Possibility Of A New Or Different Kind Of Accident From Any Accident Previously Evaluated.

As previously described, the ice condenser is not postulated as being the initiator of any design basis accident. The proposed changes do not impact any plant system, structure or component that is an accident initiator. The proposed TSs and TS Bases changes do not involve any hardware changes to the ice condenser or other change that could create any new accident mechanisms. Therefore, there can be no new or different accidents created from those already identified and evaluated.

C. The Proposed Change Does Not Involve A Significant Reduction In A Margin Of Safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding and the reactor coolant system will not be impacted by the proposed changes. The Application provides a description of additional sub-compartment and containment pressure response analysis that has been performed. This analysis demonstrates that containment will remain fully capable of performing its design function with implementation of the proposed changes. Therefore, no safety margin will be significantly impacted.

Ice Condenser plant historical operating experience has shown that the condition of the ice condenser can be ensured to be fully capable of performing its specified safety functions with performing ice mass verifications and ice mass distribution SRs on an 18 month frequency. The request to increase the MNS [McGuire] surveillance interval from 9 months to 18 months will provide performance of ice mass verification at the end of the fuel cycle, which will verify that the maintenance program is effective in maintaining the ice mass for the entire fuel cycle. Duke's utilization of the data from previous performance of TS required ice mass inspections, and additional inspection beyond these requirements, has enabled the development of a maintenance program that is reliably predictive regarding the specific operating characteristics of each [of] the ice beds at Catawba and McGuire Nuclear Stations. This maintenance program reliably predicts sublimation and determines which ice baskets to replenish prior to beginning a new 18 months operating cycle. An ice mass surveillance performed at the conclusion of the 18 month frequency in an as-found condition verifies that the maintenance program is restoring the ice bed operating cycle to maintain the ice mass quantity and distribution requirements for performance of the intended safety functions.

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: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket No. 50–370, McGuire Nuclear Station, Unit 2, Mecklenburg County, North Carolina

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendment would authorize the licensee to change the Updated Final Safety Analysis Report (UFSAR) to describe a process for the intentional puncture of an irradiated fuel rod in order to transfer the fuel rod gap gasses to a collection chamber, and then straighten the fuel rod for storage in a broken rod capsule.

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:

Duke Energy has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The bent rod, located in the McGuire Unit 2 spent fuel pool, has no interfaces with any primary system, secondary system, or power transmission system. All work will be performed in the spent fuel pool, with the bent rod located under approximately 23 feet of water. None of the systems listed above are modified by the activity. No accident initiator or accident mitigation systems, for any UFSAR [Updated Final Safety Analysis Report] Chapter 15 accidents, other than fuel handling accidents, are affected with this proposed procedure for degassing and straightening of the irradiated Mk-BW fuel rod. For these reasons, the activity does not involve an increase in the probability of an accident previously evaluated.

This evolution is bounded by the UFSAR Chapter 15 dropped fuel assembly fuel handling accident inside the fuel handling building. This accident assumes that the postulated accident occurs 100 hours after reactor shutdown, the fuel assembly had 60 GWD/MTU [Gigawatt Days/Metric Ton Uranium] burnup, all rods in one fuel

assembly are ruptured, and the assembly damaged has the highest peaking factor. The resultant Exclusion Area Boundary doses for the UFSAR Chapter 15 accident are 0.8 Rem Whole Body and 9.1 Rem Thyroid.

For the planned evolution, the cladding on only one rod will be breached and the fission product gas contained. This evolution will occur approximately ten years after reactor shutdown. The fuel rod burnup is only 20.46 GWD/MTU, and the fuel pin peaking factor is 1.28. Some accident mitigation will be provided by the fuel building ventilation system filters, although the majority of the activity will be from Kr-85, a noble gas, which is unaffected by these filters. The highest potential dose occurs to a worker in the fuel building, with whole body doses of less than 3 mRem and a thyroid dose of less than 3E–11 mRem. Doses at the Exclusion Area Boundary are trivial.

Should the gas container fail, the offsite activity release and, as such, the consequences of this accident will be less than any previously evaluated. Analyses have been performed to determine upper bounds for the source term, the offsite doses, and the control room dose. Both the source term and doses were found to be significantly lower than the results of the corresponding design basis analyses.

For the above reasons, it is determined that the intentional degassing of the Mk-BW fuel rod does not involve a significant increase in either the probability or the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

As discussed above, no ''accident initiators'' are affected by the proposed activity. The planned evolution is bounded by the dropped fuel assembly fuel handling accident inside the fuel handling building. The fuel rod straightening and degassing tools are no heavier than other fuel handling tools utilized in the spent fuel pool during routine operations. A safety tray will be placed on top of the racks and below the work area to capture any falling debris during the operation. Also a mockup operation will be performed at the Framatome facilities to identify and correct any deficiencies in the tools and processes.

For these reasons, the activity will not create the possibility of a new or different type of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Margin of safety is associated with the confidence in the ability of the fission product barriers (the fuel and fuel cladding, the reactor coolant system pressure boundary, and the containment) to limit the level of radiation doses to the public. The proposed degassing of the fuel rod will intentionally breach the fuel rod cladding, but the fuel rod gap gasses will be captured in a collection chamber for holdup and later controlled release.

This evolution will occur beyond a nine year cooling and isotopic decay period. The level of activity in the fuel rod is very low compared to the level of activity associated with the postulated fuel handling accident; the only significant activity remaining is approximately 10 Ci [Curies] of Krypton 85. The bent rod will be maintained under 23 feet of water. Should the collection chamber fail, and the fuel rod gap gas activity released, the highest potential dose occurs to a worker in the fuel handling building, with whole body doses of less than 3 mRem, and a thyroid dose of less than 3E–11 mRem. For this reason, the resulting dose to the public is inconsequential. Both offsite doses and doses to the control room were found to be small compared to the limits of 10 CFR 100 and GDC 19. For these reasons, the activity does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

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: March 14, 2003.

Description of amendment request: The licensee requests modification of the River Bend Technical Specifications to revise several of the Surveillance Requirements (SRs) pertaining to testing of the Division 1 and 2 standby diesel generators (DGs). The proposed change would modify specific restrictions associated with these SRs that prohibit performing required testing in Modes 1 and 2. The affected SRs are SR 3.8.1.9 and SR 3.8.1.10.

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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The DG and its associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. As such, the ability of the DG to respond to a design basis accident will not be adversely impacted by these proposed changes. The capability of the DG to supply power in a timely manner will not be compromised by permitting performance of DG testing during periods of power operation. Additionally, limiting testing to only one DG at a time ensures that design basis requirements for backup power is met, should a fault occur on the tested DG. Therefore, there would be no significant impact on any accident consequences.

Based on the above, the proposed change to permit certain DG surveillance tests to be performed during plant operation will have no effect on accident probabilities or consequences. 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.

No new accident causal mechanisms would be created as a result of NRC [U.S. Nuclear Regulatory Commission] approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Based on the above, implementation of the proposed changes would 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.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the DG do not affect the operability requirements for the DG, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DG to perform its required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers.

Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, 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: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Energy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 27, 2003.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a post accident sampling system (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** (FR) on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the FR on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated February 27, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 20, 2003.

Description of amendment request: This proposed change reflects an expanded operating domain for Vermont Yankee Nuclear Power Station (VY) resulting from the proposed implementation of the Average Power Range Monitor, Rod Block Monitor Technical Specifications/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves allowing VY to operate in an expanded operating domain. Physical changes provide for enhanced instrument performance or were the result of safety analyses that support mitigation of design bases accidents. There are no changes to radioactive source terms or release pathways. The proposed change does not result in any significant change in the availability of logic systems or safety-related systems themselves. Required protective functions will be maintained. The proposed change does not degrade plant design, operation, or the performance of any safety system assumed to function in the accident analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed change, which allows VY to operate in an expanded operating domain, does not introduce any new accidents or failure mechanisms because the change and the effects on existing structures, systems and components have been evaluated and found to not have any adverse effects. The proposed change will not substantially impose new requirements or eliminate any existing requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change, which allows VY to operate in an expanded operating domain, does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no impact on the conclusions of any safety analysis. The proposed change does not involve any increase in calculated off-site dose consequences. The performance of equipment will not be significantly affected.

Therefore, there is no significant reduction in the margin of safety as a result of this proposed change.

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: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) allowable values (AVs) for isolation condenser system isolation Function 4.a, Steam Flow-High, and Function 4.b, Return Flow-High.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes support the replacement of a differential pressure switch with a functionally equivalent differential pressure switch. Since there are no functional changes and no change in analytical limits, there is no significant increase in the probability or consequences of an accident previously evaluated.

Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite as a result of the proposed change.

In summary, the proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not adversely impact the manner in which the instrument will operate under normal and abnormal operating conditions. Therefore, these 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 allowed values do not affect the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the probability of failure or availability of the affected instrumentation. The revised AVs do not affect the analytical limits assumed in the safety analyses for actuation of instrumentation. Therefore, 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.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 17, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (ITS) 3.6.3 ''Containment Isolation Valves,'' to allow verification by administrative means of isolation devices in high radiation areas, and isolation devices that are locked, sealed or otherwise secured. The specific Conditions and Surveillance Requirements (SR) in ITS 3.6.3 that will be affected are: (1) Condition A—Required Action A.2, (2) Condition B—Required Actions B.1 and B.2, (3) Condition C—Required Action C.2, and (4) SR 3.6.3.3 and SR 3.6.3.4. The licensee stated that the changes are consistent with the NUREG–1430, ''Standard Technical Specifications: Babcock and Wilcox Plants,'' Revision 2, and Standard Technical Specification Task Force (TSTF) Traveler TSTF–440. Associated changes are also proposed for the ITS Bases.

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 not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed License Amendment Request (LAR) will revise the position verification requirements for manual containment isolation devices that are locked, sealed, or otherwise secured in the closed position. The proposed changes will allow the use of administrative controls to verify the position of these types of devices when they are being used to meet the Required Actions of ITS 3.6.3 Condition A, Condition B or Condition C, and will exclude these valves from Surveillance Requirement (SR) 3.6.3.3 and

SR 3.6.3.4 physical position verification requirements.

The design function of the affected containment isolation valves, and the initial conditions for accidents that require these valves to be closed, will not be affected by the proposed changes. Therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed license amendment will revise the position verification requirements for manual containment isolation devices that are locked, sealed, or otherwise secured in the closed position.

No changes to the actual position/status of these valves are proposed by this amendment. The proposed amendment will not result in changes to the design, physical configuration or operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

Changes to the position verification requirements of normally closed manual containment isolation valves that are locked, sealed, or otherwise secured do not change the position/status of these valves. The proposed amendment does not impact the ability of these valves to perform their design function of controlling containment leakage rates during design basis radiological accidents. Therefore, the proposed amendment does not result in a reduction of the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: 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.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 11, 2003.

Description of amendment request: The proposed amendment would change the operating license to authorize the licensee to revise the updated final safety analysis report (UFSAR) by deleting a footnote stating that the Nuclear Regulatory Commission (NRC) does not endorse the reactor building crane as single-failure-proof.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

For heavy load handling associated with the spent fuel pool, Section 5.1.4(2) of NUREG–0612 states ''The effects of heavy load drops in the reactor building should be analyzed to show that the evaluation criteria of Section 5.1 are satisfied.''

An alternative to this is Section 5.1.4(1): ''The reactor building crane, and associated lifting devices used for handling of * * * heavy loads, should satisfy the single-failure-proof guidelines of Section 5.1.6 of this report.''

The upgraded crane and handling systems satisfy the guidelines of Section 5.1.6. The evaluation criteria of NUREG–0612, Section 5.1 are met with a single-failure-proof crane that satisfies the guidelines of Section 5.1.6, or consequence analysis that satisfies Section 5.1.4(2).

Section 5.2 of NUREG–0612 states that an evaluation of fault trees shows that: ''(1) The likelihood for unacceptable consequences in terms of excessive releases of gap activity or potential for criticality due to accidental dropping of postulated heavy loads after implementation of the guidelines of Section 5.1 is very low; and (2) The potential for unacceptable consequences is comparable for any of the alternatives evaluated for fault trees, indicating the relative equivalency between alternatives.''

Since the NRC fault tree evaluation shows that the potential for unacceptable consequences is comparable for the two alternatives in Section 5.1.4 of NUREG–0612, the proposed request does not significantly change the potential for unacceptable consequences to the plant in conducting heavy load handling above the spent fuel pool. The probability of a load drop accident caused by use of the reactor building crane has been reduced to where it is so small to be considered not credible within regulatory accepted standards. The reason for this is attributed to the following:

(a) The reactor building crane is single-failure-proof. In 1985, the DAEC [Duane Arnold Energy Center] Reactor Building Crane was modified to meet the requirements of NUREG–0554 ''Single Failure Proof Cranes for Nuclear Power Plants.'' The design of the Ederer hoist and trolley system was evaluated in a Staff SER [Safety Evaluation Report] of the Generic Licensing Topical Report EDR–1, Rev. 3, for Ederer's Nuclear Safety-Related Extra Safety and Monitoring (X–SAM) Cranes, dated August 3, 1983.

(b) The rigging used with the crane will be single-failure-proof per Section 5.1.6 of NUREG–0612.

(c) The requirements of NUREG–0612 Phase 1 have been implemented. The NRC provided a Safety Evaluation (SE) and Technical Evaluation Report (TER) by letter dated June 12, 1984 that concluded that the guidelines of NUREG–0612, Sections 5.1.1 and 5.3 had been satisfied and that Phase I of this issue for the DAEC was acceptable.

Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The crane has been upgraded to meet single-failure-proof requirements in accordance with the applicable provisions of NUREG–0612 and NUREG–0554. The use of a single-failure-proof crane with rigging and procedures that implement the requirements of NUREG–0612 assures that a cask drop is not credible. The loading on the single-failure-proof crane will not exceed the design rated load of the crane.

Rigging for critical loads will meet NUREG–0612 requirements for single-failure-proof handling systems whenever a critical load is to be lifted over safety related equipment, or over the spent fuel pool, or over the cask when it is in the reactor building and loaded with fuel. When a cask is loaded on the crane hook, the crane trolley and bridge movements will be maintained within well defined limits of operation.

The loading conditions, load combinations, allowable stress limits, and methods of analysis used in the evaluations are consistent with the current licensing basis for the DAEC and NRC approved methods.

Therefore, this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

In 1985, the reactor building crane was upgraded to single-failure-proof in compliance with NUREG–0554. The upgraded crane and handling system is in compliance with NUREG–0612, Sections 5.1.1 and 5.1.6. The NRC in NUREG–0612, Section 5.2 documented their review of the potential consequences of a load drop when handled by a single-failure-proof crane using single-failure-proof rigging compared with other alternatives and concluded as follows: ''The likelihood for unacceptable consequences in terms of excessive releases of gap activity or potential for criticality due to accidental dropping of postulated heavy loads after implementation of the guidelines of Section 5.1 is very low.''

This means that a load drop is considered to be unlikely within regulatory accepted standards when the load is handled by a single-failure-proof crane and handling system, and performed in accordance with Section 5.1 of NUREG–0612. A single-failure-proof crane design incorporates the applicable design basis event that in this case is a seismic event. A load drop is of such low probability that it is considered unlikely when it is handled with the reactor building crane since the crane and its handling systems satisfy the NUREG–0612 criteria for a single-failure-proof crane. Therefore, any load lifted over the spent fuel pool using the reactor building crane has a very low probability of falling into the spent fuel pool

accidentally or as a result of a design basis event.

Therefore, this proposed amendment will 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: Mr. Alvin Gutterman, Morgan Lewis, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 29, 2003.

Description of amendment request: The proposed amendment would change the drywell leakage and sump monitoring detection section of the Technical Specifications (TSs). These proposed changes clarify the definitions and restructure the coolant leakage section of the TSs and revise unidentified leakage and total leakage requirements. The revisions add a TS Limiting Condition for Operation for leakage-detection instrumentation being inoperable. This request supercedes the Nuclear Management Company's license amendment request of October 8, 2002, as supplemented November 8, 2002, which was previously noticed in the **Federal Register** on October 17, 2002 (67 FR 64144).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. Additionally, the proposed changes do not affect any accident previously evaluated in the Monticello Updated Safety Analysis Report (USAR). The changes simply redefine the parameters for evaluation of leakage in the drywell. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC [intergranular stress corrosion cracking]. Consequently, the probability of an accident previously evaluated is not significantly increased.

The equipment referenced in the proposed changes is still required to monitor the reactor coolant system operational leakage to ensure appropriate action is taken before the integrity of the reactor coolant pressure boundary is impaired. As a result, operation of the facility with the proposed changes will continue to meet the licensing basis and applicable guidelines. As such, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant; no new or different type of equipment will be installed; nor are there significant changes in the methods governing normal plant operation. The changes simply redefine the parameters for evaluation of leakage in the drywell. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC. Additionally, the changes do not create any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment redefines the parameters for evaluation of leakage in the drywell. There are no physical alterations of the plant; no new or different type of equipment will be installed; nor are there significant changes in the methods governing normal plant operation. Additionally, the proposed changes do not exceed or alter a design basis or safety limit as established in the Monticello licensing basis.

Therefore, these proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 11, 2003.

Description of amendment request: The proposed amendments would revise technical specification (TS) 5.5.9, ''Ventilation Filter Testing Program (VFTP)'' by (1) incorporating filter test face velocity limits for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system, and shield building ventilation system; and (2) making editorial changes. The proposed amendments would also delete the additional conditions in Appendix B of the Operating Licenses which require the licensee to complete an evaluation of the maximum test face velocity for the ventilation systems in TS 5.5.9. The additional conditions also require the licensee to submit a license amendment request for a TS amendment to specify the maximum test face velocity if the maximum actual face velocity is the greater than 110 percent of 40 fpm. Additionally, the proposed amendments would revise the penetration and system bypass limit from 0.05 percent to 0.5 percent for the ventilation systems.

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:

Revision of the Allowable Filtration Penetration and System Bypass

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to increase the penetration and system bypass limit for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system from 0.05% to 0.5%. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new

failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to increase the penetration and system bypass limit for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system from 0.05% to 0.5%. Site dose analyses are required to demonstrate that regulatory dose limits are met using Technical Specification allowed penetration and system bypass with an appropriate safety factor as an input to the evaluation. Since the dose analyses have not been modified to credit 0.05% penetration and system bypass, this proposed change has no effect on the dose analyses which demonstrate that the regulatory limits are satisfied. Since the NRC regulatory limits must continue to be met and the safety factor will not be changed by this proposed Technical Specification change, this change does not involve a significant reduction in the margin of safety.

Addition of Filter Test Face Velocities

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These additional Technical Specification limits on system performance assures these ventilation systems are tested and maintained within their designed function limits and may increase the margin of safety for these systems. Therefore this change does not involve a significant reduction in the margin of safety.

Editorial and Administrative Changes

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes 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 requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 11, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.1.4, ''Rod Group Alignment Limits,'' and TS 3.1.7, ''Rod Position Indication,'' to allow up to 1 hour of soak time following substantial rod movement during which individual rod position indicators may not be within its limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to allow up to one hour of soak time following substantial rod movement during which time the rod position indication may be outside its limits. This would allow an additional hour for rod position indication to be inoperable or a control rod to be misaligned prior to entry into a Technical Specification LCO [Limiting Condition for Operation] Condition and Required Actions.

Rod position indication instrumentation is not an assumed accident initiator and thus this change does not involve a significant increase in the probability of an accident. Rod position indication instrumentation provides information on control rod position. Inoperable rod position indication instrumentation for an additional hour does not make a rod misaligned. The consequences of a rod misaligned for an additional hour are considered separately, thus inoperable rod position indication instrumentation, by itself, for an additional hour does not involve an increase in the consequences of an accident.

This license amendment request may allow a misaligned rod to be undetected for an additional hour. Plant safety analyses consider two types of rod misalignment events, static misalignment and a dropped rod. This license amendment request does not involve a significant increase in the probability of a misaligned control rod event because the one-hour time extension does not affect the control rod drive system features, whose failure would result in either type of misalignment. This proposed one-hour time extension for a control rod to be misaligned does not involve a significant increase in the

consequences of a rod misalignment event as follows. The analyses show that a single dropped rod event, without any operator intervention, does not result in any fuel pin failure, therefore the rod drop event is not time dependent and an additional hour with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod drop events cause the reactor to trip and therefore an additional hour would not have any impact on this event.

In the static misalignment event, one or more control rods are assumed to be statically misplaced from the allowed position. This situation might occur if a rod were left behind when inserting or withdrawing banks, or if a single rod were to be withdrawn. The analysis of this event is bounded by modeling the most limiting configuration which is the control banks at the full power insertion limit except for a single control rod fully withdrawn. The analyses show that, without any operator intervention, a single fully withdrawn rod event does not result in any fuel pin failure, therefore the static rod misalignment event is not time dependent and an additional hour with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod misalignment events are bounded by the single rod misalignment analyses and therefore an additional hour would not have any impact on this event.

Therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to allow up to one hour of soak time following substantial rod movement during which time the rod position indication may be outside its limits. This would allow an additional hour for rod position indication instrumentation to be inoperable or a control rod to be misaligned prior to entry into a Technical Specification LCO Condition and Required Actions.

The rod position indication system is an instrumentation system that provides indication to the operators that a control rod may be misaligned. Inoperable individual rod position indication instrumentation does not by itself in any way harm or impact reactor operation. Inoperable rod position indication instrumentation may impair the ability of the operators to detect a misaligned rod. The impact of inoperable rod position indication instrumentation may be offset by availability of other indications that a rod is misaligned such as nuclear instrumentation indication that reactor power has shifted to one side of the core or thermocouple indication that the core temperatures increased in one region of the core and/or decreased in another region of the core.

The Prairie Island staff is not aware of a misaligned control rod in more than 50 reactor-years of plant operation. The likelihood of a misaligned rod at Prairie Island is small and the likelihood of a misaligned rod coincident with inoperable rod position indication during the allowed one-hour extension is smaller.

The addition of one hour soak time for the rod position indication instrumentation will allow the operators and engineers to focus on monitoring the reactor performance without unnecessary entry into LCO Conditions and Required Actions with the concomitant administrative activities. Thus, these changes may enhance plant safety and reliability of equipment.

In conclusion, the proposed addition of an LCO Note in LCO 3.1.4 and 3.1.7 does not involve a significant reduction in the margin of safety because rod position indication instrumentation inoperability by itself does not impact plant safety, rod misalignment is unlikely, there may be other indications of rod misalignment, rod misalignment coincident with rod position indication instrumentation inoperability within the one hour extension is unlikely, and plant safety may be enhanced by avoiding unnecessary LCO Condition entry.

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: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 19, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 5.3, ''Plant Staff Qualifications.'' The proposed amendments would revise requirements that have been superseded based on licensed operator training programs being accredited by the National Academy for Nuclear Training (NANT) and promulgation of the revised 10 CFR part 55, ''Operators' Licenses,'' which became effective on May 26, 1987.

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 Specification change is an administrative change to clarify the current requirements for licensed operator qualifications and the licensed operator training program. With this change, the Technical Specifications continue to meet the current requirements of 10 CFR [Part] 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training programs are certified to be accredited and are based on a systems approach to training. The Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training. The proposed Technical Specification change takes credit for the National Academy for Nuclear Training accreditation of the licensed operator training program. The Technical Specification requirements for all other plant staff qualifications remain unchanged.

Therefore, the proposed change does 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.

The proposed Technical Specification change is an administrative change to clarify the current requirements for licensed operator qualifications and the licensed operator training program and to conform to the revised 10 CFR [Part] 55.

As discussed above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as licensed operator training programs are certified to be accredited and based on a systems approach to training. As previously noted, the Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training. The proposed Technical

Specification change takes credit for the National Academy for Nuclear Training accreditation of the licensed operator training program. The Technical Specification requirements for all other plant staff qualifications remain unchanged.

Additionally, the proposed Technical Specification change does not affect plant design, hardware, system operation, or procedures. 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.

The proposed Technical Specification change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and the licensed operator training program. With this change the Technical Specifications continue to be consistent with the requirements of 10 CFR [Part] 55. The Technical Specification qualification requirements for all other plant staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, the Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by the Institute for Nuclear Power Operations' National Academy for Nuclear Training in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining a National Academy for Nuclear Training accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conforms with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining the National Academy for Nuclear Training accredited licensed operator training program.

In addition, the NRC published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants.'' This document again acknowledges that the Institute for Nuclear Power Operations' National Academy for Nuclear Training guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

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 requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 6, 2003.

Description of amendment requests: The proposed license amendments would revise Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 of TS 3.3.1, ''Reactor Trip System Instrumentation,'' of the Diablo Canyon Technical Specifications. The change to SR 3.3.1.2 is consistent with NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–371. The change to SR 3.3.1.3 is editorial in nature.

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 change to Technical Specifications (TS) Surveillance Requirement (SR) 3.3.1.2 and SR 3.3.1.3 is consistent with the NRC approved Industry/Technical Specifications Task Force Standard Technical Specification Change Traveler, TSTF–371, and NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 2.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The reactor trip system (RTS) instrumentation will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR) are not adversely affected because the change to the nuclear instrumentation system (NIS) power range channel daily surveillance assures the conservative response of the channel even at part-power levels.

The proposed change modifies the NIS power range channel daily surveillance requirement to help assure the NIS power range functions are tested in a manner consistent with the safety analysis and licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR.

Therefore, the proposed 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 accident previously evaluated.

There is no hardware change or change in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements or response time limits will be affected. The NIS power range high trip setpoint adjustment requirements, prior to adjusting indicated power in a decreasing power direction, will ensure the reactor power level is consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. There will be no adverse effect or challenges imposed on any safety-related system as a result of the change.

This amendment does not alter the design or performance of the Eagle 21 System, NIS, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change requires a revision to the criteria for implementation of NIS power range channel adjustments based on secondary power calorimetric calculations; however, the change does not eliminate any RTS surveillances or alter the frequency of surveillances required by the Technical Specifications. The revision to the criteria for implementation of the daily surveillance will have a conservative effect on the performance of the NIS power range channels, particularly at part-power conditions. The nominal trip setpoints specified in the Technical Specification Bases and the safety analysis

limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The imposition of appropriate surveillance testing requirements will not reduce any margin of safety since the change will assure that safety analysis assumptions on reactor power are verified on a periodic frequency.

Therefore, 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 requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 28, 2003.

Description of amendment requests: The proposed license amendments would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' to add Surveillance Requirement (SR) 3.3.1.16 to function 3.a, ''Power Range Neutron Flux Rate-High Positive Rate Trip,'' in Table 3.3.1–1. The amendments would also eliminate periodic pressure sensor response time testing (RTT) and periodic protection channel RTT.

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.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes.

The design of the Reactor Trip System (RTS) instrumentation, specifically the positive flux rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes additional surveillance requirements to assure safety-related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The Technical Specification Bases changes do not result in a condition where the design, material, or construction standards that were applicable prior to change are altered. The same RTS and engineered safety features actuation system instrumentation is being used; the time response allocations/modeling assumptions in the Updated Final Safety Analysis Report (UFSAR) Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not change any system interface and could not increase the likelihood of an accident since these events are independent of this change.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR.

Therefore, the proposed 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 accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements for the PFRT function. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

This change does not alter the performance of the process protection racks, nuclear instrumentation, and logic systems used in the plant protection systems. These systems will still have their response time verified by test before being placed in operational service. Changing the method of verifying instrument response for these systems (assuring equipment operability) from time response testing to channel and calibration checks will not create any new [accident] initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristic to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effects or challenges imposed on any safety-related system as a result of this change.

Therefore the proposed 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 a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor, nuclear enthalpy rise hot channel factor, loss of coolant accident peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis are changed. The imposition of additional surveillance requirements maintains the margin of safety by assuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for the process protection racks, nuclear instrumentation, and logic systems are modified to allow use of engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which might cause the response time to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant 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: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of amendment request: March 3, 2003.

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) 5.5.9, ''Steam Generator Tube Surveillance Program,'' and TS 5.6.10, ''Steam Generator Tube Inspection Report,'' for Diablo Canyon Power Plant (DCPP) Unit 2, to apply a probability of detection (POD) of 1.0 to the bobbin indication in the steam generator (SG) 4 tube at row 44, column 45 at the second tube support plate (TSP) on the hot leg side (R44C45–2H) for the beginning of cycle (BOC) voltage distribution for the DCPP Unit 2 BOC Cycle 12 operational assessment.

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 use of probability of detection (POD) of 1.0 for the bobbin indication in the Diablo Canyon Power Plant (DCPP) Unit 2 steam generator (SG) 4 tube at row 44, column 45 at the second tube support plate (TSP) on the hot leg side (R44C45–2H) for the beginning of cycle (BOC) voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment does not increase the probability of an accident. Based on industry and plant specific bobbin detection data for outside diameter stress corrosion cracks (ODSCC) within the SG tube support plate region, large voltage bobbin indications, such as those the size of indication R44C45–2H, can be detected with 100 percent certainty. Since large voltage ODSCC bobbin indications within the SG TSP can be detected, they will not be left in service, and therefore these indications should not be included in the voltage distribution for the purpose of operational assessments. Therefore, these large voltage indications will not result in an increase in the probability of a steam generator tube rupture (SGTR) accident or an increase in the consequences of a SGTR or main steam line break (MSLB) accident.

Therefore, the proposed changes will not result in 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 accident previously evaluated.

The use of a POD of 1.0 for the DCPP Unit 2 R44C45–2H bobbin indication for the BOC voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment concerns the SG tubes and can only affect the SGTR accident. Since the SGTR accident is already considered in the Final Safety Analysis Report Update, there in [is] no possibility to create a design basis accident which has not been previously evaluated.

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 change does not involve a significant reduction in a margin of safety.

The use of POD of 1.0 for the DCPP Unit 2 R44C45–2H bobbin indication for the BOC voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment does not involve a significant reduction in a margin of safety. The applicable margin of safety potentially impacted is the Technical Specification 5.6.10, ''Steam Generator Tube Inspection Report,'' projected end-of-cycle leakage for a MSLB accident and the projected end-of-cycle probability of burst. Based on industry and plant specific bobbin detection data for ODSCC within the SG tube support plate region, large voltage bobbin indications, such as those the size of indication R44C45–2H, can be detected with 100 percent certainty and will not be left in service. Therefore these indications should not be included in the voltage distribution for the purpose of operational assessments. Therefore, these large voltage indications will not result in a significant increase in the actual end-of-cycle leakage for a MSLB accident or the actual end-of-cycle probability of burst.

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 requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 14, 2003.

Description of amendment request: The proposed amendment would extend the surveillance test intervals and allowed out-of-service times for the end-of-cycle recirculation pump trip instrumentation.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 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 amendment would extend the allowed out-of-service times (AOTs) and surveillance test intervals (STIs) for the end of cycle recirculation pump trip (EOC-RPT) instrumentation system. No changes are being made to any EOC-RPT instrumentation setpoints or components. The effect of the proposed changes is to reduce the potential for unnecessary plant scrams or transients. The proposed changes were evaluated in General Electric Company Topical Report GENE–770–06–1–A which concluded that they do not result in a degradation in overall plant safety.

Since the proposed changes do not affect any accident initiator, and since the EOC-RPT instrumentation will remain capable of performing its design function, 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.

Extending the AOTs and STIs for the EOC-RPT instrumentation does not change the design function or operation of any plant equipment. Additionally, no new modes of plant operation are involved with these changes.

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?

Response: No.

No changes are being made to any plant instrumentation setpoints or to the required level of redundancy. The proposed changes were evaluated in General Electric Company Topical Report GENE–770–06–1–A, which concluded that they do not result in a degradation in overall plant safety.

Therefore, 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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 29, 2003.

Description of amendment request: The licensee proposed administrative and editorial changes to the Salem Nuclear Generating Station (Salem), Unit No. 1 and Unit No. 2 Technical Specifications (TSs) as follows: (1) The second equation in Salem Unit No. 2 TS

Limiting Condition for Operation 3.2.2 on page 3/4 2–5 will be revised; (2) Salem Unit No. 2 TS Table 3.3–6 will be revised to indicate that one operable channel of containment air particulate activity reactor coolant system (RCS) leakage detection instrumentation is required for operation in Modes 1 through 4; (3) Salem Unit No. 1 TS 3/4.7.6 Action Statements ''d.'' (for Modes 1, 2, 3 and 4) and ''e.'' (for Modes 5 and 6) will be revised to refer to Action 25 in TS Table 3.3–6; and (4) Salem Unit No. 2 TS 3/4.7.6 Action Statements ''d.'' (for Modes 1, 2, 3 and 4) and ''e.'' (for Modes 5 and 6) will be revised to refer to Action 28 in TS Table 3.3–6.

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 changes to the TSs are administrative or editorial in nature and do not change the intent of any Technical Specification requirement. No changes are being made to any plant systems, structures or components (SSCs).

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 administrative and editorial changes to the TSs do not change the design function or operation of any plant equipment. Additionally, no new modes of plant operation are involved with these changes.

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?

Response: No.

The proposed changes are administrative and editorial corrections to the TSs that do not affect the ability of plant SSCs to perform their design basis accident functions. 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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment request: March 11, 2003.

Description of amendment request: The amendment application requests a revision to the Unit 1 defueled Technical Specifications administrative controls section to propose changes in organizational responsibilities. Specifically, the proposed change identifies that the Vice President, Engineering & Technical Services would be responsible for decommissioning activities. Additionally, the Station Manager would be designated as having approval authority for activities within the Station Manager's organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This is a request to revise the San Onofre Nuclear Generating Station, Unit 1 permanently defueled technical specifications administrative controls. The proposed administrative changes are due to a realignment of the Unit 1 Decommissioning Project into the Engineering & Technical Services organization and the establishment of the Station Manager position within the Nuclear Generation organization. The proposed changes identify the Vice President, Engineering & Technical Services to be responsible for decommissioning activities and provides the Station Manager the opportunity to approve procedures and changes to procedures and changes to the Process Control Program that are under the Station Manger's responsibility. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. The proposed changes are administrative. Therefore, the proposed changes do not involve the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. The proposed changes are administrative. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis. These administrative changes do not affect the design or operation of the facility 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: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Acting Section Chief: Mark Thaggard.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendments request: March 25, 2003.

Description of amendments request: The proposed amendments would revise Technical Specification 3.5.2, ''ECCS—Operating,'' Surveillance Requirement (SR) 3.5.2.5. Specifically, the proposed change would replace the requirement to verify specific surveillance test values for the Emergency Core Cooling System (ECCS) pumps with the requirement to verify the developed head for each ECCS pump in accordance with the Inservice Testing Program. This new requirement is identical to SR 3.5.2.4 in NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' Revision 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.

Deleting the specific surveillance test values for Emergency Core Cooling System (ECCS) pumps from Surveillance Requirement (SR) 3.5.2.5 does not affect the probability of occurrence or consequences of an accident previously evaluated because ECCS pumps are for accident mitigation and do not contribute to initiation of accidents. Periodic surveillance testing of the ECCS pumps in accordance with the Inservice Testing (IST) program provides assurance that the pumps will perform as assumed in the safety analysis. There is no change to the safety analysis.

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.

ECCS pumps are for accident mitigation and do not contribute to accident initiation. The ECCS system will still be verified capable of meeting its emergency core cooling and IST requirements. There is no change to the safety analysis.

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.

There is no change to the safety analysis. Testing of the ECCS pumps as required by the IST Program combined with the existing Technical Specification 3.5.2—''ECCS—Operating'' surveillance requirements ensure that the ECCS requirements remain met without a significant reduction in a margin of safety. Therefore, there is no significant reduction in a margin of safety.

Based on the above, SCE [Southern California Edison Company] concludes that the proposed amendments present 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 amendments request involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket Nos. 50–327 and 328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 13, 2003.

Description of amendment request: The proposed amendments would modify the Sequoyah Nuclear Plant, Units 1 and 2, Operating Licenses DPR–77 and DPR–79. This proposed request provides Technical Specification (TS) change 03–01 that would revise the limiting condition for operation for TS Section 3.5.1, ''Cold Leg Injection Accumulators'' and TS Section 3.5.5, ''Refueling Water Storage Tank.'' This revision would modify the single boron concentration requirement by inserting a table that defines the minimum and maximum amount of boron that is required for accident mitigation based on the number of tritium producing rods in the core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change modifies the required boron concentration for the cold leg accumulators (CLAs) and refueling water storage tank (RWST). The proposed values have been verified to maintain the required accident mitigation safety function for the CLAs and RWST. The CLAs and RWST safety function is to mitigate accidents that require the injection of borated water to cool the core and to control reactivity. These functions are not potential sources for accident generation and the modification of the boron concentration that supports event mitigation will not increase the potential for an accident. Therefore, the possibility of an accident is not increased by the proposed changes. The boron levels for this change are based on the number or tritium producing rods in the core. As the number of rods is increased the need for additional shutdown boron also increases. This effect has been evaluated with the same methodology utilized for previous NRC approved amendments associated with tritium production. This methodology ensures that the impact of tritium producing rods is adequately compensated for by the required boron concentrations and has been incorporated into the proposed revision. Since the boron levels will continue to maintain the safety function of the CLAs and RWST in the same manner as currently approved, the consequences of an accident is not increased by the proposed changes.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change only modifies boron concentrations for accident mitigation functions of the CLAs and RWST. These functions do not have a potential to generate accidents as they only serve to perform mitigation functions associated with an accident. The proposed requirements will maintain the mitigation function in an identical manner as currently approved. There are no plant equipment or operational changes associated with the proposed revision other than the adjustment of the boron level in the CLAs and RWST. Therefore, since the CLA and RWST functions are not altered and the plant will continue to operate without change, the possibility of a new or different kind of an accident is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

This change proposes boron concentration requirements that support the accident mitigation functions of the CLAs and RWST equivalent to the currently approved limits. The proposed change does not alter any plant equipment or components and does not alter any setpoints utilized for the actuation of accident mitigation system or control functions. The proposed boron values have been verified to provide the same level of reactivity control for accident mitigation. Therefore, the proposed change will 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.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 12, 2003.

Description of amendment request: The proposed amendment would revise the Updated Final Safety Analysis Report (UFSAR) and the Technical Specification Bases. The revision would update the quality assurance criteria and the basis for the seismic qualification of the ducting installed as part of the suspended ceiling air delivery system in the main control room (MCR).

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 design function of the MCR ducting system is to support pressurization and cooling of the control room during normal and accident conditions. The MCR ducting is a passive plant feature and does not act as an accident initiator. Consequently, the changes in the MCR ducting system and suspended ceiling quality assurance (QA) requirements and qualification methodology do not result in an increase in the probability of an accident previously evaluated.

For the principal design basis accidents, Loss of Coolant Accident (LOCA), Internal Flood, Steam Generator Tube Rupture (STGR), Main Steam Line Break (MSLB), etc., the integrity of the MCR HVAC [heating, ventilation, and air conditioning] system, including the suspended ceiling, will not be compromised. These accidents do not have a structural effect on the MCR. This means that for postulated radiological or toxic chemical accidents, the ability to both pressurize and

maintain MCR temperatures within the design limits is unaffected by the limited QA and newly defined seismic requirements for the air delivery components.

An accident that involves a fire that affects the MCR or the habitability of the MCR was not a consideration for the qualification of the air distribution components. A fire of this nature will result in plant operation from the Auxiliary Control Room which is supported by a separate heating, ventilation and air conditioning (HVAC) supply system.

An earthquake (including the Design Basis SSE [safe shutdown earthquake]) is the only event for which the design basis for the MCR HVAC and suspended ceiling is potentially challenged. A seismic qualification report by an industry seismic expert concludes that the air delivery components will remain in place, will retain their structural integrity such that flow will not be impeded, and the pressure boundary will not be lost during and subsequent to a design basis seismic event. Further, as assured by TVA's qualification report, the suspended ceiling will remain in place during and subsequent to a seismic event or accident. Thus, the revised QA and seismic qualification requirements for the MCR air delivery components and suspended ceiling will not result in loss of safety function for any design basis accident or event. Consequently, the accident dose consequences as previously evaluated in the UFSAR are not affected by the proposed license amendment.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The MCR air delivery components addressed by the proposed amendment are not an accident initiator and therefore, failure of these components will not initiate a design basis accident. In addition, the subject air delivery components and suspended ceiling have been seismically qualified, as previously discussed, and a determination has been made that they will not fail during a design basis accident. Therefore, the air delivery components and suspended ceiling will continue to perform their safety function during normal and accident conditions. Consequently, this activity does not create a possibility of a new or different type of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The changes addressed in TVA's proposed amendment are associated with changes in QA requirements and seismic qualification methodology for safety related air delivery components and for the suspended ceiling. The change does not affect specific HVAC equipment safety limits, design limits, set points, or other critical parameters. In addition, the new seismic analysis methodology and limited QA requirements ensure that these components will continue to perform their safety functions during normal and accident conditions. The previously implied margin of safety against structural or functional failure of the air delivery components or suspended ceiling during and after a design basis SSE has not been reduced. Consequently, the MCR HVAC system or suspended ceiling margin of safety has not been significantly reduced by this proposed amendment.

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, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 24, 2003.

Description of amendment request: The proposed amendment would revise the design and licensing basis failure modes and effects analysis for specific valves in the essential raw cooling water system, component cooling water system, and control air system. Tennessee Valley Authority has identified a condition where containment integrity, accident flood levels, and sump boron concentrations subsequent to a high-energy line break events could not be assured automatically as stated in the updated final safety analysis report (UFSAR). In certain postulated events, manual actions may be required using equipment not currently evaluated in the UFSAR.

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 manual actions required by this change are only needed after a high energy line break (HELB) accident, such as a loss-of-coolant-accident (LOCA), main steam line break (MSLB), feedwater line break accidents, etc., has occurred inside containment and a single failure of an outboard containment isolation valve to close has occurred on one of four specific lines inside containment. In this event, the manual actions ensure containment is isolated, which is consistent with the current design. Consequently, the manual actions of isolating the air and water lines after an accident do not affect the frequency of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

The UFSAR currently indicates that the containment vessel design and the containment isolation system automatically ensure containment integrity is maintained and thus ensure that release of radioactive material from containment remains below allowable limits during and subsequent to an accident. Current UFSAR Failure Modes and Effects Analysis (FMEA) for the affected essential raw cooling water (ERCW), component cooling system (CCS), and control air system (CAS) valves indicate a single failure of the outboard containment isolation valve in conjunction with a concurrent accident and consequential (due to interaction) failure of the system piping inside containment, has no adverse effect on the plant; thus, containment integrity is ensured automatically. This change revises these evaluations to indicate manual actions are required to ensure containment integrity in the event of an HELB and single failure of an outboard containment isolation valve. Evaluations have been performed to ensure adequate instrumentation and time is available to recognize the need and to manually isolate an affected line subsequent to an HELB if the outboard containment isolation valve does not close. The emergency procedures have been revised that require manual actions to be performed to isolate CAS, ERCW, and CCS and to open and close a post accident sampling facility (PASF) cooling water supply valve. The Operations Staff has confirmed that the subject containment lines can be isolated within the allowable time and without exceeding the dose limitations as required by 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) 19, ''Control Room.''

Evaluations have indicated that adequate instrumentation, time, and staffing are available to manually isolate the lines into containment. Operator actions are achievable and can be accomplished without heroic actions. Therefore, containment integrity from overpressurization or flooding is maintained within the current design basis analysis, and the radiological consequences of an accident will not be increased by this change. Consequently, 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.

This change implements manual actions to isolate four specific containment lines in lieu of automatic containment isolation for previously identified accidents. The manual actions are required to maintain containment integrity from overpressurization, containment flood levels, sump pH levels, and emergency core cooling system (ECCS) water boron concentrations subsequent to an HELB inside containment concurrent with a single failure of an outboard containment isolation valve on a CAS, ERCW, or CCS line. The UFSAR FMEA evaluations will be revised by this proposed change to include the failure modes and associated manual actions.

NRC Information Notice (IN) 97–78, ''Crediting of Operator Actions in Place of Automatic Actions and Modifications of

Operator Actions, including Response Times,'' provided guidance to the industry concerning use of operator actions in place of automated system or component actuation. IN 97–78 states: In those instances where licensees consider temporary or permanent changes to the facility which credit operator actions, the NRC has relied on the guidance provided in * * * ANSI/ANS 58.8, ''Time Response Design Criteria for Safety-related Operator Actions,'' * * * for evaluating such changes. The American Nuclear Society (ANS)–58.8, establishes the requirements for safety-related operator actions, which are summarized as follows: (1) The specific operator actions required, (2) the potentially harsh or inhospitable environmental conditions expected, (3) ingress/egress paths taken by the operators to accomplish functions, (4) procedural guidance for required actions, (5) operator training and qualifications to carry out actions, (6) any additional support personnel and/or equipment to carry out actions, (7) information required by the control room staff to determine whether action is required, including qualified instrumentation to diagnose the situation and to verify that the action is successfully, (8) ability to recover from credible errors in performance of manual actions, and the expected time required to make such a recovery, and (9) consideration of risk significance of operator actions.

The manual actions implemented by this change can be completed within the guidance and criteria provided in IN 97–78 and ANS–58.8. Consequently, the manual actions can be credited in the mitigation of the specific accidents. With credit for the manual actions to isolate the affected lines subsequent to an accident inside containment, the type of accidents and consequences currently evaluated in the UFSAR, remains the same. Therefore, the proposed change does not create the possibility of new or different kinds of accidents from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety[?]

Response: No.

This change establishes requirements for manual actions to isolate one air line and three water lines subsequent to an accident inside containment concurrent with a single failure of a containment isolation valve to close. The manual actions ensure air or water cannot continue to enter containment with a single failure of an outboard containment isolation valve when the line pressure boundary inside containment is lost due to an accident and associated pipe interactions. The safety-related configuration of the lines (outboard motor operated valve and inboard check valve) continues to ensure the containment environment is automatically prevented from exiting the line to outside the containment. Safety-related instrumentation is available to inform operators that the manual actions are required, and operators have been trained in the requirements for addressing the failures of valves to close. In addition, adequate time and resources are available to perform the manual actions. The manual actions meet the criteria for safety-related operator actions contained in NRC IN 97–78 and ANS–58.8. Further, the proposed change to allow credit for the manual actions does not affect the offsite and Main Control Room dose consequences of the accidents currently reported in UFSAR Chapter 15, Accident Analyses. Therefore, 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 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 6, 2003.

Brief description of amendments: Technical Specifications Section 1.1 ''Definitions'' for Engineered Safety Feature (ESF) Response Time and Reactor Trip System (RTS) Response Time require U.S. Nuclear Regulatory Commission (NRC) review and approval of any methodology used to allocate response times in lieu of measuring them. The application requests NRC review and approval of a topical report to allow the use of allocated signal processing and actuation logic response times in the overall verification of the protection system channel response time.

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 change does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS [Engineered Safety Feature Actuation System] instrumentation are being used and the time response allocations and modeling assumptions in the Chapter 15 safety analysis are unchanged. Only the method of verifying the time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR [Final Safety Analysis Report]. Therefore, the proposed change does 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.

The proposed change does not alter the performance of the process protection racks, the nuclear instrumentation, or the logic systems used in the plant protection systems. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristics to exceed the total allowance. Changing the method of periodically verifying instrument response for these systems from response time testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the total system response time assumed in the safety analysis. The periodic response time verification method for the Process protection racks, the nuclear instrumentation and the logic systems is modified to allow the use of actual test data or engineering data. The method of verification still provides assurance that the total system response time is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which might cause the response time to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by

periodic surveillance. 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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 18, 2003.

Brief description of amendments: The proposed amendment would delete certain of the Surveillance Requirements in Technical Specification 3.6.3 entitled ''Containment Isolation Valves.''

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.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected.

The proposed changes will not involve a significant increase in the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, 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.

The proposed change does not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed change. The proposed change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analyses.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. None of the acceptance criteria for any accident analysis is changed. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of amendment request: December 13, 2002.

Description of amendment request: The proposed amendments will extend the Completion Time of Technical Specification (TS) 3.8.7, Inverters-Operating, Required Action A.1, from 24 hours to 14 days for an inoperable inverter on either Train H or Train J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to extend the Completion Time for an inoperable inverter from 24 hours to 14 days does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. In addition, this proposed change will not alter assumptions relative to the mitigation of an accident or transient event.

The licensee performed an evaluation to determine the risk significance of the proposed change. This risk evaluation concluded that the increases in annual core damage frequency (CDF) and large early release frequency (LERF) associated with the proposed change can be characterized as ''very small changes'' by Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.'' Additional evaluation by the licensee determined that the incremental conditional core damage probability (ICCDP) and incremental conditional large early release probability (ICLERP) associated with the proposed change are within the acceptance criteria in RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications.'' Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to extend the Completion Time for an inoperable inverter has been evaluated for its effect on plant safety. The licensee's risk-informed evaluation concluded that the increases in annual CDF and LERF associated with the proposed change can be characterized as ''very small changes'' by RG 1.174. The

ICCDP and ICLERP associated with the proposed change are within the acceptance criteria in RG 1.177. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

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, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: November 27, 2002.

Brief description of amendment: This amendment deletes technical specification (TS) 5.5.3, ''Post Accident Sampling,'' and thereby eliminates the requirements to have and maintain the post accident sampling system at the Clinton Power Station, Unit 1. The amendment also addresses related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment.''

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 155.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2797).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: April 10, 2002, as supplemented February 12, 2003.

Brief description of amendment: The amendment deleted Technical Specification 4.6.1.c, related to 24-month emergency diesel generator surveillance, and relocated these requirements to the Updated Final Safety Evaluation Report (UFSAR).

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days, including the relocation of the emergency diesel generator maintenance requirements of Technical Specification 4.6.1.c to the Updated Final Safety Analysis Report (UFSAR), as was described in the licensee's application dated April 10, 2002, and evaluated in the NRC staff's safety evaluation dated April 3, 2003, and which relocation shall be included in the next scheduled update of the UFSAR pursuant to 10 CFR 50.71(e).

Amendment No.: 243.

Facility Operating License No. DPR–50: 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 April 3, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 24, 2002, as supplemented February 21, 2003.

Brief Description of amendments: The amendments revise the Technical Specifications Section 3.1.7, ''Standby Liquid Control (SLC) System,'' to reflect modifications being made to the system as a result of transition to the GE14 fuel design.

Date of issuance: March 25, 2003.

Effective date: March 25, 2003.

Amendment Nos.: 227 and 255.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications and Appendix B, ''Additional Conditions.''

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53984).

The February 21, 2003, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: November 7, 2002, as supplemented February 17, 2002.

Brief description of amendment: The amendment revises the Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2 from 1.09 to 1.11

for two recirculation loop operation and from 1.10 to 1.13 for single recirculation loop operation.

Date of issuance: March 25, 2003.

Effective date: March 25, 2003.

Amendment No.: 254.

Facility Operating License No. DPR–62: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75869). The February 17, 2003, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 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 28, 2002, as supplemented November 21, 2002.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by adding Topical Report EMF–2328 (P)(A), ''PWR Small Break LOCA Evaluation Model, S–RELAP5 Based'' as reference in the TS to allow the licensee to update the methodologies that are used for safety analyses for the Shearon Harris Nuclear Power Plant, Unit 1. The amendment also relocates referenced methodologies within TS 6.9.1.6.2 to group mechanical design methodologies together.

Date of issuance: March 28, 2003.

Effective date: March 28, 2003.

Amendment No.: 114.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63691). The November 21, 2002, supplement contained clarifying information only 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 28, 2003.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002, as supplemented December 20, 2002, and February 27, 2003.

Brief description of amendment: The amendment revises the Fermi 2 Technical Specifications (TSs) to allow a one-time deferral of the Type A primary containment integrated leak rate test. Specifically, TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' would be revised to extend the current interval for performing the containment Type A test to 15 years.

Date of issuance: March 27, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 153.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42817).

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 27, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 6, 2001, as supplemented on December 27, 2001, and July 15, August 6, and October 29, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) associated with the spent fuel pool (SFP). Specifically, the amendment increases the allowable nominal average fuel assembly enrichment from 4.5 weight percent (w/o) Uranium-235 (U–235) to 4.85 w/o U–235 for all regions of the SFP, the new fuel storage racks (dry), and the reactor core; allows fuel to be located in the 40 storage cells in Region B of the SFP that are currently empty and blocked; credits SFP soluble boron for reactivity control during normal conditions; and reduces the Boraflex reactivity credit in Regions A and B of the SFP.

Date of issuance: April 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 274.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7414). The supplement dated December 27, 2001, provided a revision to the licensee's analysis of the issue of no significant hazards consideration, as originally provided in the November 6, 2001, application. The supplements dated July 15, August 6, and October 29, 2002, 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.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 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 3, 2002, as supplemented on January 23, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.9, ''Pressurizer,'' to increase the pressurizer water level limit when the plant is in MODE 3 (Hot Standby). The pressurizer water level limit for MODES 1 and 2 (Power Operation and Startup) remains unchanged. The amendment also revises TS 3.8.4, ''DC Sources—Operating,'' to remove the notes that refer to the one-time amendment allowing the online replacement of station batteries 31 and 32. The notes were no longer applicable since the batteries have been replaced.

Date of issuance: March 25, 2003.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 216.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45566).

The January 23 letter provided clarifying information that did not enlarge the scope of the original **Federal Register** notice 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 25, 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: December 4, 2002, which replaces the original applications dated May 1, 2002.

Brief description of amendment: The proposed amendment would change the Pilgrim Nuclear Power Station Technical Specification (TS) Figures 3.6.1, 3.6.2, and 3.6.3 to extend the applicability of the current reactor pressure vessel pressure-temperature (P–T) curves through the end of Operating Cycle (OC) 16. The current P–T curves were approved for use in License Amendment 190, dated April 13, 2001, and are limited to use through the end of OC 14. The proposed change would delete the 20 and 32 Effective Full Power Year curves and replace the wording of the title blocks to allow use through the end of OC 16.

Date of issuance: March 28, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 197.

Facility Operating License No. DPR–35: This amendment revised the TS.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7816).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 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: August 19, 2002, as supplemented by letter dated December 19, 2002.

Brief description of amendment: The amendment revises the Technical Specifications by: (1) Modifying the wording of the current Surveillance Requirement (SR) 4.0.1 and SR 4.0.3 to be consistent with NUREG–1431, Revision 2, Improved Standard Technical Specifications (ISTS) wording for SR 3.0.1 and SR 3.0.3; and (2) modifying the ISTS wording, adopted in Item (1), above, for SR 4.0.3 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 "* * * when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement is added to SR 4.0.3: "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 21, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 187.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5670).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 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: December 20, 2002.

Brief description of amendment: This amendment approves several administrative changes to the Waterford Steam Electric Station, Unit 3 Technical Specifications (TSs) to revise, correct, or clarify certain titles, page numbers, and heading information. It also revises personnel and committee titles that have been changed, revises administrative reporting requirements to conform to 10 CFR 50.4, and deletes redundant or unnecessary requirements from TSs 5.4, 6.6, and 6.7.

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 188.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5673).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 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: August 16, 2002.

Brief description of amendments: The amendments modify the Unit 3 allowable value Technical Specification, and the Units 2 and 3 surveillance requirements Technical Specification for the reactor protection system scram discharge volume water level-high function.

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 198/191.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68737).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 3, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle 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 LaSalle County 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 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 158/144.

Facility Operating License Nos. NPF–11 and NPF–18: 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 21, 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: August 22, 2002.

Brief description of amendments: The amendments modify the required surveillance interval from monthly to quarterly for calibration of the trip units associated with the instrumentation channels of the Anticipated Transient Without Scram-Recirculation Pump Trip system.

Date of issuance: April 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 213 and 207.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61682). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 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: October 16, 2002, as supplemented January 28, 2003.

Brief description of amendment: The amendment would revise the Technical Specification values for the 4 kilovolt degraded-voltage and loss-of-voltage relays.

Date of issuance: March 26, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 256.

Facility Operating License No. DPR–74: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68739).

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 26, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: December 19, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to add the definition of shutdown margin (SDM), incorporate new, more restrictive SDM limits, add the associated limiting condition for operation actions and completion times for each applicable operating condition if the SDM is not met, and add surveillance requirements for verifying SDM.

Date of issuance: March 27, 2003.

Effective date: March 27, 2003.

Amendment No.: 180.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2806).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 29, 2002, as supplemented by letter dated January 24, 2003.

Brief description of amendment: The amendment changes the surveillance requirement of TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time 5-year extension to the 10-year interval for performing the next Type A containment integrated leakage rate test (ILRT). The change allows ILRT testing within 15 years from the last ILRT, which was performed in September 1993.

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 249.

Facility Operating License No. DPR 49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21291).

The supplemental letter 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 21, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 22, 2002, as supplemented October 25, 2002, January 23, and February 12, 2003.

Brief description of amendment: The amendment changes TS Surveillance Requirement 4.7.A.2.b, ''Primary Containment Integrity,'' to allow a one-time, 5-year extension to the 10-year interval for performing the next Type A containment integrated leakage rate test (ILRT). The change allows ILRT testing within 15 years from the last ILRT, which was performed in March 1993.

Date of issuance: March 31, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 134.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56324).

The October 25, 2002, January 23, and February 12, 2003, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 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: July 25, 2002, as supplemented on October 21, 2002.

Brief description of amendment: The amendment would modify Technical Specification (TS) requirements for missed surveillance tests in TS 4.0.3 using the Consolidated Line Item Improvement Program, modify TS 4.0.1 to be consistent with the Standard Technical Specifications (STS), and incorporate a TS Bases Control Program in Section 6.0 in accordance with the STS.

Date of issuance: March 31, 2003.

Effective date: March 31, 2003.

Amendment No.: 145.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75883)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: April 4, 2002, as supplemented by letter dated January 9, 2003.

Brief Description of amendments: The amendments revise Technical

Specifications 5.5.17, ''Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the Type A Containment Integrated Leak Rate Test (ILRT). The 10-year interval between ILRTs is to be extended to 15 years from the previous ILRTs that were completed in March 1994 for Unit 1 and March 1995 for Unit 2.

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 159/150.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68743).

The supplement, dated January 9, 2003, provided clarifying information that did not change the scope of the April 4, 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 21, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2002, as supplemented by letters dated February 19, 2003, and February 26, 2003.

Description of amendment: This one-time condition establishes special provisions and requirements for safe operation of Unit 2 while heavy load lifts are performed during the Unit 1 steam generator replacement project. The provisions for heavy load lifts are described in Topical Report 24370–TR–C–002, which was previously submitted on April 15, 2002, for NRC review and approval. The topical report contains prerequisite actions for heavy load movement, active monitoring during heavy load movement, and compensatory measures in response to the unlikely event of a heavy load drop.

Date of issuance: March 26, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 273.

Facility Operating License No. DPR–79: Amendment revises the Operating License.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75885).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of April, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9026 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specifications Improvement Regarding Scram Discharge Volume Vent and Drain Valves Actions for Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model license amendment application relating to a change in the technical specifications (TSs) required actions for inoperable vent and drain valves for the scram discharge volume (SDV) for boiling water reactors (BWRs). The purpose of these models is to permit the NRC to efficiently process amendments that propose to incorporate this change into plant-specific TS. Licensees of nuclear power reactors to which the models apply may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (68 FR 8637, February 24, 2003) which provided a model SE and a model NSHC determination related to changing the completion times to address inoperable valves in SDV vent or drain lines. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications. The staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to incorporate this change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to required actions for inoperable SDV vent and drain valves for BWRs. This proposed change was proposed for incorporation into the STS by the BWR Owners Group as Technical Specification Task Force (TSTF)–404, Revision 0.

Applicability

This proposed change to required actions for inoperable SDV vent and drain valves is applicable to BWRs.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without referencing the model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

In a notice in the **Federal Register** dated February 24, 2003 (68 FR 8637), the staff requested comment on the use

of the CLIIP for proposed changes to the required actions and completion times for inoperable SDV vent and drain valves at BWRs.

TSTF–404, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The staff received only informal comments regarding typographical and editorial errors in the model SE and NSHC determination. A specific change involves correcting the abbreviation for scram discharge volume in the model SE and NSHC determination (from S.V. to SDV). Licensees may reference in their plant-specific applications the corrected SE, NSHC determination, and environmental assessment provided below.

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation

Model Safety Evaluation—Consolidated Line Item Improvement Technical Specifications Task Force (TSTF) Change TSTF–404, Scram Discharge Volume Vent and Drain Valves

1.0 Introduction

By application dated [□], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would revise the required action within TS [3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves''] for the condition of having one or more SDV vent or drain lines with one valve inoperable. These changes are based on Technical Specifications Task Force (TSTF) change traveler TSTF–404 (Revision 0) that has been approved generically for the BWR [boiling water reactor]/4[6] Standard Technical Specifications (STS), NUREG–1433 [1434], Revision 2. A notice announcing the availability of this proposed TS change using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on [□] (68 FR yyyyy).

2.0 Regulatory Evaluation

NRC regulations and review standards such as Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 of Title 10 of the *Code of Federal Regulations*

(10 CFR), include specific requirements for reactor protection and reactivity control systems. The reactor protection systems for BWRs use a hydraulic system to insert control rods into the reactor core. During an actuation of the reactor protection system (a scram), water is exhausted from the control rod drive mechanisms to the SDVs. Proper maintenance and operation of the SDVs in terms of instrumentation and limiting water volumes are essential for assuring the reliability of the reactor protection system (see NRC Bulletin 80–17, ''Failure of Control Rods to Insert During A Scram at a BWR,'' related Orders to specific facilities, and information provided in plant final safety analysis reports and TS Bases). Maintaining the SDVs to ensure that accumulated water does not hamper or slow the insertion of control rods requires vent and drain valves. The vent and drain valves isolate during a scram to limit the amount of coolant discharged so that adequate core cooling is maintained and offsite doses remain within regulatory limits.

Specific regulatory requirements for SDV vent and drain valves are defined in TS [3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves.''] The existing limiting condition for operation [3.1.8], requires that each SDV vent and drain valve be operable. The operability of all SDV vent and drain valves ensures that the SDV vent and drain valves will close during a scram to contain reactor water discharged to the SDV piping. Since the vent and drain lines are provided with two valves in series, the single failure of one valve in the open position will not impair the isolation function of the system. Additionally, the valves are required to open on scram reset and during plant operation to control the amount of water accumulating in the SDV

If one or more SDV vent and drain lines have a single valve that is inoperable, the existing required action is to restore the valve(s) to operable status within 7 days. If an inoperable valve is not restored to operable status, a plant shutdown to MODE 3 is required within 12 hours. If one or more SDV vent or drain lines have both valves inoperable, the associated line must be isolated within 8 hours. In this condition, the plant is allowed to operate indefinitely. A note associated with the required action clarifies that the valves may be opened under administrative controls to allow draining of the SDV. The existing SDV vent and drain valve required actions are inconsistent in that, although the operational and safety concerns are similar for having one or both valves in a line being inoperable, the actions for a single inoperable valve do not allow for the isolation of the line and administrative controls to support the draining of the SDV.

The proposed change would revise the required actions to be more consistent with the safety significance of one inoperable valve in a SDV line versus two inoperable valves in an SDV line.

3.0 Technical Evaluation

The proposed changes to TS 3.1.8 are:

1. Required Action A.1 is revised from restoring the single inoperable SDV vent and drain valve in one or more SDV vent and drain lines to operable status to isolating the associated line.

2. The Note to Required Action B.1 which allows an isolated line to be unisolated under administrative controls for the purpose of draining and venting the SDV is moved to a note that applies to both Conditions A (single inoperable valve) and B (both valves inoperable).

With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. The current ACTION statement allows 7 days to repair the inoperable valve; the proposed change is to allow for the isolation of the affected line and continue operation. If the affected line is not isolated within the 7-day time period (or the inoperable valve is not restored), the licensee would then be required to proceed to MODE 3 in the next 12 hours. Maintaining the 7-day Completion Time is acceptable because of the low probability of the concurrent events of a scram within the 7 days of the Completion Time and a failure of the redundant valve(s). Alternately, if the inoperable valve was initially closed, there would be ample time and warning available to drain the SDV before an automatic scram would occur due to SDV high level.

The allowance to administratively open a line that is isolated to comply with the actions (to permit draining and venting the SDV) is allowed by existing Required Action B.1. This allowance is being moved to apply to all ACTIONS based on the change proposed to Action A. This would allow any accumulated

water in the line to be drained, to preclude a reactor scram on SDV high level. A reactor scram is initiated if the SDV water level in the instrument volume exceeds a specified setpoint. The setpoint is chosen so that all control rods are inserted before the SDV has insufficient volume to accept a full scram. Regarding the isolation of the SDV, the remaining operable SDV vent and drain valve(s) would close automatically on a scram signal to isolate the lines. Or, if both valves in a line were inoperable (and opened under this provision), the reactor coolant release could be terminated by resetting the scram from the control room, or by manually closing the valves. Resetting the scram automatically closes the scram outlet valves, isolating the control rod drive discharge path to the SDV.

Based on the low probability of an event occurring during the defined Completion Time associated with this condition, the subsequent isolation of the affected lines, and the ability to open and drain the lines before an automatic scram due to SDV high water level, the proposed change maintains the necessary safety features and is therefore acceptable. [Note-optional section if licensee provides markup of affected Bases pages: The change to TS [3.1.8] requires that the licensee revise the discussion in the associated Bases section. Although the licensee's application included possible wording for the revised Bases discussion for TS [3.1.8], the licensee will formally address the change to the Bases in accordance with [the Bases Control Program or its administrative procedure for revising Bases]. The staff does not believe that the Bases change will require prior NRC approval when evaluated against the criteria in 10 CFR 50.59, ''Changes, tests, and experiments,'' and, therefore, agrees that the revision of the Bases to TS [3.1.8] should be addressed separately from this amendment and should be included in a future update of the TS Bases in accordance with [the Bases Control Program or the licensee's administrative controls].

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Model No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment revises TS [3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,''] to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead or requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Dated at Rockville, Maryland, this 8th day of April 2003.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9196 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 15, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov.*

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.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.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail LAB@nrc.gov.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement

[1] The radioactive materials are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

with the Commission. Wisconsin law (subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria''), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in Chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility (''unrestricted release''). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use (''restricted release''). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special ''decommissioning-possession only'' license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. By-product materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct,

source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–9027 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0023.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Self-Monitoring Questionnaire for Investment Fund Sub-projects

Form Number: OPIC–217

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3 hours per project.

Number of Responses: 325 per year.

Federal Cost: $19,500.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development aboard.

Dated: April 8, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–9069 Filed 4–14–03; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: Thursday, April 24, 2003, 1:30 p.m. (OPEN Portion), 1:45 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Testimonial Jon M. Huntsman, Jr.
3. Approval of January 30, 2003 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:45 p.m.)

1. Finance Project in Ecuador.
2. Approval of January 30, 2003 Minutes (Open Portion).
3. Pending Major Projects.
4. Reports.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: April 11, 2003.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 03–9323 Filed 4–11–03; 12:16 pm]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 2003 is 4.80 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 2002 and April 2003.

For premium payment years beginning in:	The required interest rate is:
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 2003, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	6/30/03	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the second quarter (April through June) of 2003 (*i.e.*, the rate reported for March 17, 2003) is 4.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	6/30/03	4.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of April 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–9193 Filed 4–14–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25998; File No. 812–11760]

Pacific Life Insurance Company, et al.; Notice of Application

April 9, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for exemption pursuant to section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder.

APPLICANTS: Pacific Life Insurance Company (''Pacific Life''); Separate Account A of Pacific Life (''Pacific Separate Account A''); Pacific Select Variable Annuity Separate Account of Pacific Life Insurance Company (''PSVA Separate Account''); Pacific Life and Annuity Company (''PL&A'') (together with Pacific Life the ''PL Insurers''); Separate Account A of Pacific Life and Annuity Company (''PL&A Separate Account A'') (together with Pacific Separate Account A, PSVA Separate Account, and any other separate account of Pacific Life, PL&A or any life insurance company that is a successor in interest to PL Insurers, the ''Separate Accounts''); and Pacific Select Distributors, Inc. (''PSD'') (collectively referred to herein as ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit, when contracts are returned during the free look period, (i) the recapture of certain credit enhancements (''Credit Enhancements'') applied to the ''Contract Value'' (as defined herein) of Contractholders [1] under: (a) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that Pacific Life issues through Pacific Separate Account A (''Pacific Value''), and (b) other Variable Contracts and any Future Variable Contracts offered by a Future Account, provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Value; and (ii) the recapture of any amounts credited under Pacific Portfolios variable annuity (''Pacific Portfolios''), Pacific Innovations Select variable annuity (''Pacific Innovations Select''), and Pacific One variable annuity (''Pacific One''), each a flexible premium deferred variable annuity contract funded by Pacific Separate Account A; Pacific Select Variable Annuity, a flexible premium deferred annuity and variable accumulation contract funded by Pacific Select Variable Annuity Separate Account (''PSVA''), Pacific Innovations Select variable annuity, a flexible premium deferred variable annuity contract funded by PL&A Separate Account A (''PL&A Innovations Select''), or any Variable Contract or Future Variable Contract that is sold to Contractholders in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced (''Cost Reduction Credit'') or to Contractholders who meet certain criteria as established by the relevant PL Insurer (''Eligible Person Credit''), provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PSVA, Pacific Portfolios, Pacific One, Pacific Innovations Select or PL&A Innovations Select.

FILING DATES: The Application was filed with the SEC on August 24, 1999 and amended and restated on March 28, 2000, April 30, 2002, November 25, 2002 and April 8, 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 May 1, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service.

[1] The term ''Contractholder'' refers to contractholders of any variable annuity contract funded by a Separate Account (each, a ''Variable Contract'' and collectively, ''Variable Contracts''), and also to contractholders of any variable annuity contract funded in the future by a Separate Account or a separate account that will be established in the future by a PL Insurer to support variable annuity contracts issued by a PL Insurer (''Future Account'') (collectively, ''Future Variable Contracts'').

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Robin S. Yonis, Esq., Pacific Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Pacific Life is a life insurance company that is domiciled in California. Along with subsidiaries and affiliates, Pacific Life's operations include life insurance, annuities, pension and institutional products, group employee benefits, broker/dealer operations and investment advisory services. Pacific Life is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Its principal offices are located at 700 Newport Center Drive, Newport Beach, California 92660.

2. Pacific Separate Account A was established on September 7, 1994 as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust. Pacific Life is the legal owner of the assets in Pacific Separate Account A. Pacific Separate Account A currently has 37 subaccounts or ''Variable Investment Options.'' Each Variable Investment Option invests in a corresponding series of Pacific Select Fund (''Select Fund''), an open-end registered management investment company for which Pacific Life serves as investment adviser, or The Prudential Series Fund, Inc., an open-end registered investment company for which Prudential Investments Fund Management LLC serves as investment adviser. Pacific Separate Account A funds the variable benefits available under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select variable annuity (''Pacific One Select''), Pacific Innovations variable annuity (''Pacific Innovations''), and Pacific Odyssey variable annuity (''Pacific Odyssey''). Interests in Pacific Separate Account A under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select, Pacific Innovations, and Pacific Odyssey are registered under the Securities Act of 1933, as amended (the ''1933 Act'').

3. PSVA Separate Account was established by Pacific Life on November 30, 1989 as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust. Pacific Life is the legal owner of the assets in PSVA Separate Account. Each Variable Investment Option invests in a corresponding series of Select Fund. PSVA Separate Account currently has 33 Variable Investment Options. PSVA Separate Account currently funds the variable benefits available under PSVA. Interests in PSVA Separate Account are registered under the 1933 Act.

4. PL&A is a life insurance company domiciled in Arizona. PL&A's operations include life insurance, annuity and institutional products, group life and health insurance and various other insurance products and services. At the end of 2002, PL&A's total statutory assets were $854 million. PL&A is authorized to conduct life insurance and annuity business in Arizona, New York and certain other states. PL&A's principal office is located at 700 Newport Center Drive, Newport Beach, California 92660.

5. PL&A Separate Account A was established by PL&A on January 25, 1999 as a segregated asset account of PL&A and is registered with the Commission as a unit investment trust. PL&A is the legal owner of the assets in PL&A Separate Account A. Each Variable Investment Option invests in a corresponding series of Select Fund. PL&A Separate Account A currently has 33 Variable Investment Options. PL&A Separate Account A currently funds the variable benefits available under PL&A Innovations Select. Interests in PL&A Separate Account A are registered under the 1933 Act.

6. PSD, a wholly-owned subsidiary of Pacific Life, serves as the principal underwriter for the Variable Contracts issued by the PL Insurers. It is also anticipated that PSD will serve as the principal underwriter for any Future Variable Contracts issued by the PL Insurers. PSD is registered with the Commission as a broker/dealer under the Securities Exchange Act of 1934, as amended. The PL Insurers and PSD have entered into selling agreements with various broker/dealers, under which such broker/dealers act as agents of the relevant PL Insurer and PSD in the sale of the relevant PL Insurer's Variable Contracts.

7. Pacific Value offers a ''Credit Enhancement'' feature under which Pacific Life automatically adds an amount to each Contractholder's overall ''Contract Value'' at the time any amount is paid to Pacific Life by or on behalf of the Contractholder as consideration of the benefits provided under the Variable Contract (referred to herein as ''Purchase Payments''). The term ''Contract Value'' refers to the sum (as calculated at the end of each business day) of: (i) The aggregate amount of Purchase Payments and any prior Credit Enhancements, and any earnings or losses thereon, less any fees and charges, held for a Contractholder's Variable Contract in any Variable Investment Option; (ii) the aggregate amount of Purchase Payments and any prior Credit Enhancements, and any interest earned thereon, less any fees and charges held for a Contractholder's Variable Contract in any fixed option available under his or her Variable Contract; (iii) the amount, including any interest accrued, held to secure the principal amount the Contractholder has on any outstanding loan under his or her Variable Contract; less (iv) the amount, including any associated withdrawal charge, of any withdrawal from the Variable Contract.

8. Credit Enhancements are allocated among a Contractholder's investment options then in effect in the same proportion that the applicable Purchase Payment is allocated. The Credit Enhancement with respect to each Purchase Payment is based on the Contractholder's total Purchase Payments made into Pacific Value less total withdrawals, including any withdrawal charges, from Pacific Value as of the date the Purchase Payment is applied. The Credit Enhancement available under Pacific Value, expressed as a percentage of the relevant Purchase Payment is set forth below:

	Credit Enhancement (percent)
Contracts issued on or after April 1, 2000; Total Purchase Payments Less Total Withdrawals:	
Less than $250,000	4.0
$250,000 or more	5.0
Contracts issued before April 1, 2000; Total Purchase Payments Less Total Withdrawals:	
Less than $100,000	3.0
At least $100,000 but less than $2.5 million	4.0
$2.5 million or more	5.0

9. PL Insurers may agree to credit a Cost Reduction Credit under the Variable Contracts (other than Pacific Innovations), in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced, such as the sale of several Variable Contracts to the same Contractholder(s), sales of large Variable Contracts, sales of Variable Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Variable Contracts. The amount of any Cost Reduction Credit will be determined based upon the amount of reduction in the selling and/or maintenance cost associated with the sale of that particular Variable Contract. A Cost Reduction Credit may be applied at the time that a Purchase Payment is made. Any Cost Reduction Credit applied at that time will not exceed 1.45% of the amount of such Purchase Payment. Alternatively, Cost Reduction Credits may be credited on the basis of Contract Value. Any Cost Reduction Credit credited on the basis of Contract Value will not exceed 1.45% of Contract Value at the time that it is credited.

10. PL Insurers may agree to credit an Eligible Person Credit under the Variable Contracts (other than Pacific One Select) owned by persons who meet criteria established by the relevant PL Insurer. These persons may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current selling agreement with Pacific Life or PL&A, respectively, and the affiliates of those broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons (collectively referred to as ''Eligible Persons''). Under the Eligible Person Credit Program, the relevant PL Insurer credits additional amounts to Pacific Innovations Select, Pacific Portfolios, PSVA or PL&A Innovations Select Variable Contracts owned by Eligible Persons if such Variable Contracts are purchased directly through PSD. Under these circumstances, Eligible Persons will not be afforded the benefit of services of any other broker/dealer nor will any commission be payable to any broker/dealer in connection with such purchases. Rather, Eligible Persons must contact the relevant PL Insurer or PSD directly with servicing questions, changes in their Variable Contracts and related matters. Eligible Persons are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a 0.25% (annualized) Credit of Contract Value, payable quarterly in advance, from the second Contract Year through the third Contract Year for Pacific Innocations Select and PL&A Innovations Select and a 1% (annualized) Credit of Contract Value, payable quarterly in advance from the fourth Contract Year until annuitization, on an annual basis. Eligible Person who are Pacific Portfolios or PSVA Contractholders are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a 0.25% (annualized) Eligible Person Credit on Contract Value from the second Contract Year through the fifth Contract Year for PSVA (sixth Contract Year for Pacific Portfolios) on a quarterly basis, and a 1% (annualized) Eligible Person Credit on Contract Value from the sixth Contract Year for PSVA (seventh Contract Year for Pacific Portfolios) until annuitization, payable quarterly. The amount currently credited to Variable Contracts owned by Eligible Persons will approximate the reduction in expenses realized by the relevant PL Insurer by not incurring brokerage commission in selling such Variable Contracts, with the determination of the expense reduction and of such crediting being made in accordance with administrative procedures established by the relevant PL Insurer.

11. In the future, PL Insurers may credit Contracts issued to Eligible Persons with Eligible Person Credits greater than 5% of each Purchase Payment, except that with respect to Purchase Payments made during: (i) The relevant free look period; and (ii) after the relevant free look period has expired, but during the first Contract month, the amount of any Eligible Person Credit will be limited to no more than 9% of such Purchase Payment.

12. Although the PL Insurers are seeking to offer Credit Enhancements, Eligible Person Credits and Cost Reduction Credits (collectively, ''Credits'') through Variable Contracts and Future Variable Contracts, no PL Insurer will apply more than one Credit to the Contract Value of a Contractholder's Variable Contract or Future Variable Contract. Thus, if a PL Insurer applies the Credit Enhancement to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Cost Reduction Credit. Similarly, if a PL Insurer applies the Eligible Person Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply a Cost Reduction Credit or a Credit Enhancement. If a PL Insurer offers a Cost Reduction Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Credit Enhancement.

13. The Variable Contracts issued by the PL Insurers permit Contractholders to cancel their Variable Contracts and to receive a refund during the ''free look'' period, which is mandated by state law. The free look period for Variable Contracts issued by the PL Insurers generally is a 10-day period beginning on the day a Contractholder receives his or her Variable Contract.[2] Where a Contractholder returns a Variable Contract during the free look period, the Variable Contract will be canceled and treated as void from the Contract Date.

14. In most instances, a Contractholder who returns a Variable Contract during the free look period is entitled to a refund of his or her Contract Value, as of the end of the business day on which the PL Insurer received a Contractholder's Variable Contract for cancellation.[3] Contractholders for all Variable Contracts issued by PL Insurers (other than PSVA) generally will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. PSVA Contractholders who exercise their free-look rights are entitled to, in addition to a refund of Contract Value, a refund of any Variable Contract charges and fees deducted from the portion of their Contract Value allocated to Variable Investment Options.

15. There are two circumstances under which the Contract Value returned to a Contractholder who returns his or her Variable Contract during the free look period will be subject to certain additional deductions. First, the amount of any Credit Enhancement added to the Contract Value of a Pacific Value Contractholder

[2] Certain states require longer free look periods with respect to variable annuity contracts.

[3] Under the laws of a number of states, if free look rights are exercised within the allotted time, the sponsoring insurance company is required to refund a Contractholder's Purchase Payment allocated to the Variable Investment Options available under the Separate Account, instead of the value of the Variable Investment Options on the date the Variable Contract is returned. In those states, if a Contractholder exercises his free look rights when his Contract Value is less than the amount of his Purchase Payments, Pacific Life bears the risk of loss. Pacific Life currently allocates Purchase Payments during the free-look period to the investment options selected by the Contractholder, in accordance with the Contractholder application or the Contractholder's most recent allocation instructions, regardless of whether Pacific Life is required to refund a Contractholder's Purchase Payment or the value of the Variable Investment Options if a Contractholder exercises his free look rights.

will be deducted if the Contractholder returns the Variable Contract during the free look period. Second, any Cost Reduction Credit or Eligible Person Credit that is added to the Contract Value of a Pacific One, Pacific Portfolios, PSVA, Pacific Innovations Select and PL&A Innovations Select Contractholder who returns his or her Variable Contract during the free look period will also be deducted from the amount ultimately returned to the Contractholder.

16. The relief sought in the Application is intended to permit PL Insurers to deduct the amounts of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contract Value of any Variable Contract or Future Variable Contract, funded by a Separate Account or a Future Account, offering such credits in cases where Contractholders return their Variable Contract or Future Variable Contract during the free look period.

17. Under the current practice in effect for each applicable Variable Contract, the amount of the Credit Enhancement or the Eligible Person Credit added to a Contractholder's Contract Value is returned to a PL Insurer where free look rights are exercised, together with any gains or losses on the amount credited.[4] In addition, PSVA Contractholders receive any Contract fees and charges that Pacific Life may have deducted from the credited amounts.

18. If the relief sought in the Application is granted, Applicants would change the amount that Contractholders with any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit would receive if they exercised their rights under the applicable free look policy. If the relief applied for in the Application is granted, Contractholders exercising their free look rights would not receive the amounts added to their Contract Value in the form of Credit Enhancements, Cost Reduction Credits or Eligible Person Credits, but such Contractholders would realize the gains or incur the losses on the credit amounts.

Applicants' Legal Analysis

1. Applicants seek exemptive relief pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder to the extent deemed necessary to permit the PL Insurers: (1) To recapture any Credit Enhancement when a Contractholder returns a Variable Contract and/or Future Variable Contract during the free look period; and (2) to recapture any Cost Reduction Credits and Eligible Person Credits when a Contractholder returns a Variable Contract or Future Variable Contract during the free look period.

2. Subsection (i) of section 27 of the 1940 Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless ''(A) such contract is a redeemable security.''

3. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

4. Because the amount returned to a Contractholder who cancels a Variable Contract during the free look period does not include the amount of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit conditionally added to the Contractholder's Contract Value, the Contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account's then-current net assets. Applicants assert, however, that the recapture of the Credit Enhancement offered under Pacific Value or the Cost Reduction Credit and the Eligible Person Credit offered under the Variable Contracts, as described in the Application, would not deprive a Contractholder of his or her proportionate share of the issuer's current net assets. Any Credit Enhancements, Cost Reduction Credits or Eligible Person Credits added to the Contract Value of a Contractholder are expressly conditioned on the Contractholder's decision to keep the Variable Contract beyond the free look period. Further, Applicants assert that a Contractholder's interest in the amount of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit allocated to his or her Contract Value is not vested until the applicable free look period has expired without return of the Variable Contract in question. Unless and until the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is vested (*i.e.,* at the end of the free look period), Applicants believe that the relevant PL Insurer retains the right and interest in the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

5. Applicants further contend that it would be patently unfair to allow a Contractholder exercising his or her free look right to retain the Credit Enhancement or the Cost Reduction Credit or the Eligible Person Credit under a Variable Contract that has been returned for a refund after a period of only a few days. If PL Insurers could not recapture the amounts of such credits, individuals could purchase a Variable Contract, and simply return it for a quick profit. This could deter PL Insurers from offering the Credit Enhancement, the Cost Reduction Credit and Eligible Credit under Variable Contracts or Future Variable Contracts.

6. Moreover, because the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is not vested during the free look period, Applicants state that it is arguable that any earnings or losses attributable to these credits should also be returned to the relevant PL Insurer as the sponsoring insurance company. PL Insurers have taken and will continue to take this approach unless and until the relief requested under the Application is granted. However, if and when the Commission grants the relief requested in the Application, any gains or losses attributable to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit will be allocated to the Contractholders.

7. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

[4] However, if the amount of a Credit Enhancement, Cost Reduction Credit or Eligible Person Credit, together with any gains on such credits, exceed the withdrawal charge percentage applicable for a particular Variable Contract, the PL Insurer will refund the amount of the excess.

8. PL Insurers' recapture of the Credit Enhancement, the Cost Reduction Credit and the Eligible Person Credit in instances where a Contractholder returns a Variable Contract during the free look period might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Variable Investment Option of a Separate Account. In other words, because any such Credit Enhancements, Cost Reduction Credits and Eligible Person Credits credited by a PL Insurer are immediately added, on a conditional basis, to the Contract Value of certain Contractholders, and further because these amounts are allocated by the Contractholder to certain Variable Investment Options for the benefit of the participating Contractholder, the net asset value of each Variable Investment Option arguably is affected by these credits.

9. Applicants contend, however, that the recapture of the Credit Enhancement, Cost Reduction Credit and Eligible Person Credit under the circumstances described in this Application should not be deemed to be a violation of section 22(c) and rule 22c–1. To the extent that the recapture practices described in the Application are considered to be technical violations of these provisions, Applicants respectfully request relief from section 22(c) and rule 22c–1 in order to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits as discussed above for Variable Contracts and Future Variable Contracts cancelled during the free look period.

10. Applicants claim that the recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit does not involve either of the practices that rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

11. Applicants submit that the proposed recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit poses no such threat of dilution. To effect a recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, PL Insurers redeem interests in a Contractholder's Variable Investment Option at a price determined on the basis of the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder's Contract Value is allocated. The amount recaptured will be equal to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit paid out of the general account assets of the relevant PL Insurer. In those instances where applicable state law does not require the return of Purchase Payments, and thus permits Contractholders to retain any investment gain or to realize any investment loss, in the event of the exercise of a free look right, the amount refunded will be determined on the basis of the current net asset value of the various Variable Investment Options of the applicable Separate Accounts including gain or loss. Thus, Applicants believe that no dilution will occur upon the recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit.

12. Applicants also submit that the second practice that rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

Conclusion

Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9158 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC 25999; File No. 812–12894]

Pruco Life Insurance Company, et al.; Notice of Application

April 9, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order under section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'') granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an amendment of an Existing Order (described below) to permit the recapture of Credit amounts that differ from the Credit amounts contemplated by the Existing Order under the circumstances specified herein.

APPLICANTS: Pruco Life Insurance Company (''Pruco Life''); Pruco Life Flexible Premium Variable Annuity Account (''Pruco Life Account''); Pruco Life Insurance Company of New Jersey (''Pruco Life of New Jersey,'' and collectively with Pruco Life, the ''Insurance Companies''); Pruco Life of New Jersey Flexible Premium Variable Annuity Account (''Pruco Life of New Jersey Account,'' and collectively with Pruco Life Account, the ''Accounts''); and Prudential Investment Management Services LLC (''PIMS,'' and collectively with the Insurance Companies and the Accounts, ''Applicants'').

FILING DATE: The application was filed on October 15, 2002, and amended and restated on April 8, 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 May 5, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102–2992, Attn: C. Christopher Sprague, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On August 12, 2002, the Commission issued the Existing Order exempting certain transactions of Applicants from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder to permit, under specified circumstances, the recapture of certain credits applied to purchase payments made under certain deferred variable annuity contracts (''Strategic Partners Annuity One'' or ''Contracts'') and Future Contracts described in the Existing Order.[1]

2. The Existing Order allows the Insurance Companies to recapture credit amounts (''Credits'') that differ depending upon the purchase payment amount and the contract owner's age when the purchase payment is made. Specifically, a 4% Credit is applied to purchase payments less than $250,000 and a 5% Credit is applied to purchase payments of $250,000 or more if the Contract owner is age 80 or younger (for jointly-owned Contracts, if the older owner is 80 or younger) when the purchase payment is made. If the Contract owner is age 81 or older (for jointly-owned Contracts, if the older owner is 81 or older) when the purchase payment is made, a 3% Credit is applied, regardless of the amount of the purchase payment. These Credits generally vest upon the expiration of the free look period. However, if a Credit is applied to a purchase payment made within one year prior to death, and the death benefit amount is equal to contract value, then any Credit attributable to that purchase payment will be recaptured in calculating the death benefit payable under the Contracts.

3. Applicants seek to amend the Existing Order in one respect. Namely, the Insurance Companies would add a new ''tier'' to the above-referenced bonus structure, under which they would grant a Credit equal to 6% of any purchase payment of $1 million or more made by a Contract owner aged 80 or younger (for jointly-owned Contracts, if the older owner is aged 80 or younger). The 6% Credit would vest upon the expiration of the free look period (except for certain 6% Credits applied within one year prior to death). As to recapture upon death, if a 6% Credit is applied to a purchase payment made within one year before death, and the death benefit amount is equal to Contract value, then the Credit attributable to that purchase payment will be recaptured in calculating the death benefit amount. However, there will be no such recapture if the death benefit amount is equal to the roll-up value, the step-up value, the greater of roll-up and step-up, or total purchase payments (less any withdrawals).

4. Subsequent to the Existing Order, on December 13, 2002, Applicants filed a post-effective amendment to the registration statement for the version of Strategic Partners Annuity One currently offered by Pruco Life (File No. 333–37728) (the ''Pruco Life SPAO Amendments''). That post-yeffective amendment is now effective. The Pruco Life SPAO Amendments made several changes to the Strategic Partners Annuity One Contract, including the addition of a new ''Income Appreciator'' benefit. Applicants have incorporated the Pruco Life SPAO Amendments filing by reference into the application for purposes of detailing the features of the Pruco Life Strategic Partners Annuity One Contract that will offer the 6% Credit. The Strategic Partners Annuity One Contract described in the Pruco Life SPAO Amendments is substantially similar in all material respects to the Strategic Partners Annuity One Contract that was described in the Existing Order, with these salient differences: (a) Addition of a new, Income Appreciator Benefit, (b) increased maximum issue age for the guaranteed minimum income benefit and the guaranteed minimum death benefit and the availability of each of these benefits individually, (c) expanded availability of the fixed rate option, (d) change in the date on which the guaranteed minimum death benefit value is ''frozen'', (e) availability of the earnings appreciator supplemental death benefit and the guaranteed minimum income benefit to older age owners, and (f) modification to the joint ownership and spousal continuance features. Applicants seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life SPAO Amendments (and under any future version of the Pruco Life Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life SPAO Amendments).

5. In addition, on December 10, 2002, Pruco Life of New Jersey filed a post-effective amendment to the version of Strategic Partners Annuity One that it currently sells (File No. 333–49230). That filing also has become effective. Applicants have incorporated that filing (the ''Pruco Life of New Jersey SPAO Amendments'') by reference into the application. The version of Strategic Partners Annuity One described in the Pruco Life of New Jersey SPAO Amendments is substantially similar in all material respects to the version described in the Existing Order, except for these salient differences: (a) The newer version offers, for an additional charge, a banded bonus structure featuring credit amounts of either 3%, 4%, 5%, or 6%, (b) the newer version offers an enhanced guaranteed minimum death benefit at a higher charge, (c) the newer version modifies the joint ownership feature and adds a spousal continuance feature, and (d) the newer version reflects certain changes to the fixed options. Applicants also seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life of New Jersey SPAO Amendments (and under any future version of the Pruco Life of New Jersey Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life of New Jersey SPAO Amendments).

6. The prospectuses for the currently offered versions of the Strategic Partners Annuity One variable annuity offer the 6% Credit. However, the prospectuses also indicate that unless and until the Commission grants the relief requested in the application, the respective insurer will not recoup the amount of any 6% Credit granted within 12 months prior to death, and for a Contract that is returned during the free look period, will only recapture the value of the 6% Credit as of the business day on which the insurer receives the redemption request (less any charges attributable to that Credit).

7. The version of Strategic Partners Annuity One that offers a Credit (including the 6% Credit proposed in the application) has certain charges that differ from the counterpart contract not offering any Credit. The Contract with Credit has a different withdrawal charge schedule, under which the withdrawal charge is 8% of the amount withdrawn if no contract anniversary has elapsed since the purchase payment was made, 8% if only one contract anniversary has elapsed, 8% if only two contract anniversaries have elapsed, 8% if only three contract anniversaries have elapsed, 7% if only four contract anniversaries have elapsed, 6% if only five contract anniversaries have elapsed, and 5% if only six contract anniversaries have elapsed. The withdrawal charge no longer applies once seven or more contract anniversaries have elapsed since the date that the purchase payment was made. In contrast, the withdrawal charge applicable to the Contract not

[1] Investment Company Act Release Nos. 25660 (July 15, 2002) (notice) and 25695 (August 12, 2002) (order).

offering any Credit is 7% of the amount withdrawn if no contract anniversary has elapsed since the purchase payment was made, 6% if only one contract anniversary has elapsed, 5% if only two contract anniversaries have elapsed, 4% if only three contract anniversaries have elapsed, 3% if only four contract anniversaries have elapsed, 2% if only five contract anniversaries have elapsed, and 1% if only six contract anniversaries have elapsed. The withdrawal charge no longer applies once seven or more contract anniversaries have elapsed since the date that the purchase payment was made. In addition, there is an additional, asset-based charge equal to 10 basis points annually that applies to the version of Strategic Partners Annuity One under which Credits (including the 6% Credit) are not recaptured after expiration of the free look period unless death occurs within one year of a purchase payment.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to section 6(c) of the Act, amend the Existing Order to the extent necessary to permit the recapture of the 6% Credit amounts described above under the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the recapture of 6% Credits will not raise concerns under sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and rule 22c–1 thereunder for the same reasons given in support of the Existing Order. 6% Credits under the Contracts will be recaptured only if the owner exercises his/her free look right, and with respect to certain 6% Credits granted within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any 6% Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the 6% Credit amount has not vested. With respect to 6% Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a 6% Credit amount under a Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the 6% Credit during the free look period, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit. Applicants also note that the Contract owner is entitled to retain any investment gain attributable to the 6% Credit, even if the Credit is ultimately recaptured. Furthermore, the recapture of 6% Credits relating to purchase payments made within one year prior to death is designed to provide the Insurance Companies with a measure of protection against ''anti-selection.'' The risk here is that, rather than spreading purchase payments over a number of years, an owner will make very large payments shortly before death, thereby leaving the Insurance Companies less time to recover the cost of the 6% Credits applied, to their financial detriment.

3. Applicants submit that the provisions for recapture of any 6% Credits under the Contracts do not, and any such Future Contract provisions will not, violate section 2(a)(32) and 27(i)(2)(A) of the Act, and rule 22c–1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the Existing Order.

4. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of Contracts and Future Contracts, and underwritten or distributed by PIMS or other broker-dealers, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise.

5. Applicants undertake that Future Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to the application will be substantially similar to the Contracts in all material respects.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in section 6(c) of the 1940 Act and that an amended order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9159 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26003; File No. 812–12906]

John Hancock Life Insurance Company, et al.

April 10, 2003.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: John Hancock Life Insurance Company (''John Hancock''), John Hancock Variable Life Insurance Company (''JHVLICO''), John Hancock Variable Life Account S (''Account S''), John Hancock Variable Life Account UV (''Account UV''), John Hancock Variable Life Account U (''Account U''), John Hancock Variable Annuity Account JF (''Account JF''), John Hancock Variable Annuity Account I (''Account I''), and John Hancock Variable Annuity Account H (''Account H'') (collectively, ''Applicants'').

FILING DATE: The application was filed on December 2, 2002 and amended and restated on April 10, 2003.

SUMMARY OF APPLICATION: Applicants request an order permitting (1) Account S, Account UV, Account U, Account JF, and Account H (together with Account I, the ''Separate Accounts'') to substitute shares of the International Equity Index Fund (the ''Hancock International Fund'') for their shares of the Templeton Foreign Securities Fund (the ''Templeton Foreign Fund''); (2) Account JF and Account H to substitute shares of the International Opportunities Fund (the ''Hancock International Opportunities Fund'') for their shares of the Templeton Developing Markets Securities Fund (the ''Templeton Developing Fund'');

and (3) all of the Separate Accounts to substitute shares of the AIM V.I. Premier Equity Fund (together with the Hancock International Fund and the Hancock International Opportunities Fund, the ''Replacing Funds'') for their shares of the AIM V.I. Growth Fund (together with the Templeton Foreign Fund and the Templeton Developing Fund, the ''Replaced Funds'').

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 30, 2003 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Arnold R. Bergman, Esq., John Hancock Life Insurance Company, John Hancock Place, PO Box 111, Boston MA 02117. Copy to Foley & Lardner, 3000 K Street, NW., Washington, DC, 20007, for the attention of Thomas C. Lauerman, Esq.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552 or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (Phone: (202) 942–8090).

Applicants' Representations

1. John Hancock is a stock life insurance company organized under the laws of Massachusetts. John Hancock is a publicly-held financial services company whose primary business is life insurance and annuities.

2. JHVLICO is a wholly-owned subsidiary of John Hancock organized under the laws of Massachusetts. JHVLICO is a stock life insurance company whose primary business is life insurance and annuities.

3. Account S is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account S is registered under the Act as a unit investment trust (File No. 811–7782).

4. The variable life insurance policies Funded by Account S that are affected by this application are as follows: Medallion Executive Variable Life (''MEVL''), MEVL II, and MEVL III, interests under all of which are also registered under the Securities Act of 1933 (the ''1933 Act'') (File No. 333–425); Majestic Variable Universal Life (''MVUL''), and MVUL 98, interests under both of which are also registered under the 1933 Act (File No. 333–15075); Variable Master Plan Plus (''VCOLI''), interests under which are also registered under the 1933 Act (File No. 33–79108); Majestic VCOLI (''MVCOLI''), interests under which are also registered under the 1933 Act (File No. 333–60274); and Variable Estate Protection (''VEP''), Majestic Variable Estate Protection (''MVEP''), MVEP98, and VEP Plus, interests under all of which also are registered under the 1933 Act (File No. 33–64366); and VEP Edge, interests under which are also registered under the 1933 Act (File No. 33–55172).

5. Account UV is a separate investment account established by John Hancock under Massachusetts law to fund variable life insurance policies issued by John Hancock. Account UV is registered under the Act as a unit investment trust (File No. 811–7766).

6. The variable life insurance policies funded by Account UV that are affected by this application are as follows: VEP (NY), interests under which are also registered under the 1933 Act (File No. 33–64364); VEP Plus—NY, interests under which are also registered under the 1933 Act (File No. 333–73082); VEP Edge—NY, interests under which are also registered under the 1933 Act (File No. 333–73072); MVUL98–NY, interests under which are also registered under the 1933 Act (File No. 333–42378); MVEP98–NY, interests under which are also registered under the 1933 Act (File No. 333–73444); MEVL III–NY, interests under which are also registered under the 1933 Act (File No. 333–63654); MVL Plus—NY, interests under which are also registered under the 1933 Act (File No. 70734); MVL Edge—NY, interests under which are also registered under the 1933 Act (File No. 333–70746); and VCOLI–NY, interests under which are also registered under the 1933 Act (File No. 333–67744).

7. Account U is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account U is registered under the Act as a unit investment trust (File No. 811–3068).

8. The Account U variable life insurance policies affected by this application are as follows: MVL Plus, and MVL Edge, interests under both of which are also registered under the 1933 Act (File Nos. 33–76660 and 333–52128, respectively); and eVariable Life, interests under which are also registered under the 1933 Act (File No. 333–50312).

9. Account JF is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account JF is registered under the Act as a unit investment trust (File No. 811–07451).

10. The Account JF variable annuity contracts affected by this application are as follows: Revolution Access, Revolution Extra, Revolution Standard, and Revolution Value, interests under all of which are also registered under the 1933 Act (File Nos. 333–84769, 333–84767, 333–84763, and 333–81127, respectively).

11. Account I is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account I is registered under the Act as a unit investment trust (File No. 811–8696).

12. The only Account I variable life insurance policy affected by this application is eVariable Annuity, interests under which are also registered under the 1933 Act (File No. 333–16949).

13. Account H is a separate investment account established by John Hancock under Massachusetts law to fund variable annuity contracts issued by John Hancock. Account H is registered under the Act as a unit investment trust (File No. 811–07711).

14. The Account H contracts affected by this application are as follows: Revolution Access, Revolution Extra, Revolution Standard, and Revolution Value, interests under all of which are also registered under the 1933 Act (File Nos. 333–84771, 333–84783, 333–84765 and 333–81103, respectively).

15. Purchase payments under the variable life insurance policies and variable annuity contracts identified above (collectively, the ''Contracts'') are allocated to one or more subaccounts (''Subaccounts'') of the Separate Accounts.

16. Income, gains and losses, whether or not realized, from assets allocated to a Separate Account are, as provided in the Contracts, credited to or charged

against that Separate Account without regard to other income, gains or losses of John Hancock or JHVLICO. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by John Hancock or JHVLICO. Nevertheless, all of the obligations of each of those companies arising under the Contracts, including its commitment to make cash value payments, annuity payments or death benefit payments, are general corporate obligations of that company. Accordingly, all of the assets of John Hancock or JHVLICO, as the case may be, are available to meet its obligations under its Contracts.

17. Each Separate Account meets the definition of ''separate account'' contained in section 37 of the Act.

18. Each of the Contracts permits its owner to allocate the Contract's accumulated value among numerous available Subaccounts, each of which invests in a different investment portfolio (''Fund'') of an underlying mutual fund. Each of the Contracts has at least 32 different Subaccounts that, together with their corresponding Funds (including the applicable Replaced Funds), are currently available for this purpose.

19. Each Contract permits its owner to transfer the Contract's accumulated value from one Subaccount to another Subaccount of the issuing Separate Account at any time, subject to certain potential restrictions and charges described below. No sales charge applies to such a transfer of accumulated value among Subaccounts.

20. The only other charges on such transfers are, under certain Contracts, flat dollar amounts that may be assessed to help defray the administrative costs of effecting the transfers. In some cases, the Contracts permit up to a specified number of free transfers in a Contract year, before any such transfer charge may be imposed. Also, under certain Contracts, no transfer is permitted if it would result in the Contract being invested in more than 18 investment options over the life of the Contract (''Lifetime Cap'') or, after the annuity payment commencement date, in more than four investment options at any one time.

21. John Hancock or JHVLICO, as applicable, has reserved the right to make certain changes, including to substitute, for the shares held in any Subaccount, the shares of another Fund or the shares of another underlying mutual fund, as stated in each prospectus for the Contracts contained in its applicable registration statement under the 1933 Act.

The Funds

22. The Templeton Foreign Fund and the Templeton Developing Fund are separate Portfolios of the Franklin Templeton Variable Insurance Products Trust (the ''Templeton Trust''). The Templeton Trust is registered as a management investment company under the Act (File No. 811–5583), and the shares in each of its portfolios (including the Templeton Foreign Fund and the Templeton Developing Fund) are also registered under the 1933 Act (File No. 33–23493).

23. Both the Templeton Foreign Fund and the Templeton Developing Fund issue more than one ''class'' of shares, which differ only as to charges they impose for sales and administrative services. In each case, the Contracts use only the ''Class 2'' shares, which impose an asset-based sales charge pursuant to rule 12b–1 under the Act (''Rule 12b–1 fee'') equal to .25% per annum of the Fund's average daily net assets. Apart from the investment management fees and other Fund operating expenses, which also affect the net asset values of their shares, these Funds impose no other charges or deductions on their shares.

24. The AIM V.I. Growth Fund and the AIM V.I. Premier Equity Fund are separate portfolios of the AIM Variable Insurance Funds (''AIM V.I. Funds''). The AIM Variable Insurance Funds is registered as a management investment company under the Act (File Nos. 811–07452), and the shares in each of its Portfolios (including the AIM V.I. Growth Fund and AIM V.I. Premier Equity Fund) are also registered under the 1933 Act (File No. 33–57340).

25. Each of the AIM V.I. Growth Fund and the AIM Premier Equity Fund issues more than one ''class'' of shares, which differ only as to charges that they impose for sales and administrative services. In each case, the Contracts use only the ''Series I'' shares of the AIM V.I. Growth Fund and the AIM V.I. Premier Equity Fund, which do not impose any Rule 12b–1 fees or any other fees or charges, other than investment management fees and other operating expenses that affect the net asset value of their shares.

26. The Hancock International Fund and the Hancock International Opportunities Fund are portfolios of the John Hancock Variable Series Trust I (the ''Hancock Trust''). The Hancock Trust is registered as a management investment company under the Act (File No. 811–04990), and the shares in each of its portfolios (including the Hancock International Fund and the Hancock International Opportunities Fund) are also registered under the 1933 Act (File No. 33–2081).

27. Both the Hancock International Fund and the Hancock International Opportunities Fund offer only one class of shares, and that class does not impose any Rule 12b–1 fee or any other fees or charges, other than investment management fees and other operating expenses that affect the net asset value of their shares.

The Funds' Investment Program

28. The Templeton Foreign Fund is managed by Templeton Investment Counsel, LLC, which has no affiliation with John Hancock.

29. The investment objective of the Templeton Foreign Fund is long-term capital growth. The Fund is an international fund that seeks to achieve its objective by investing primarily in equity securities of large to medium size companies outside the U.S. The Fund's current policy is, under normal circumstances, to invest at least 80% of its assets in non-U.S. companies. The Fund's investment philosophy is ''bottom-up,'' long-term, and value oriented.

30. The Hancock International Fund is managed by John Hancock and sub-advised by Independence Investment LLC, which is indirectly wholly-owned by John Hancock. The investment objective of the Hancock International Fund is to track the performance of a broad-based equity index of foreign companies in developed and emerging markets. This Portfolio follows a ''passive'' investment strategy of owning a representative number of stocks in the index it seeks to track. The Fund is normally fully invested at all times.

31. The index used by the Hancock International Fund is a composite that is weighted 90% to the Morgan Stanley Capital International (''MSCI'') Europe, Australia and Far East (''EAFE'') Gross Domestic Product (''GDP'') Index. The MSCI EAFE GDP Index is an index of non-U.S. equities in developed countries, within which each country's representation is weighted in proportion to its gross-domestic product, while companies within each country are weighted by market capitalization. The remaining 10% of the composite consists of the MSCI Emerging Markets Free (''EMF'') Index. The MSCI EMF Index is a market capitalization-weighted index of emerging market stocks.

32. The Templeton Developing Fund is managed by Templeton Asset Management Ltd., which has no affiliation with John Hancock. The investment objective of the Templeton Developing Fund is long-term capital

appreciation. The Fund seeks to attain this objective by investing primarily in stocks of ''emerging markets'' companies, and, under normal circumstances, it invests at least 80% of its assets in such companies. The Fund's investment philosophy is ''bottom-up,'' value oriented, and long-term.

33. The Hancock International Opportunities Fund is managed by John Hancock and is sub-advised by T. Rowe Price International, Inc. The investment objective of this Fund is long-term capital appreciation. The Fund seeks to achieve this objective by investing primarily in the stocks of large established and medium sized companies located outside the U.S., primarily in developed countries and, to a lesser extent, in emerging markets. The Fund's investment philosophy entails fundamental research on individual companies, combined with stock selection of companies with certain growth characteristics. In addition, the Hancock International Opportunities Fund broadly diversifies, whereas the Templeton Developing Fund may, at times, have significant investments in one or more countries and or sectors.

34. The AIM V.I. Growth Fund is managed by AIM Advisors, Inc., which has no affiliation with John Hancock. The investment objective of the AIM V.I. Growth Fund is capital growth. The Fund seeks to meet its objective by investing principally in seasoned and better capitalized companies considered to have strong earnings momentum. The portfolio managers focus on companies that have experienced above-average growth in earnings and have excellent prospects for future growth.

35. The AIM V.I. Premier Equity Fund also is managed by AIM Advisors, Inc. The investment objective of the AIM V.I. Premier Equity Fund is long-term capital growth. Income is a secondary investment objective. The Fund seeks to meet its objective by investing, normally, at least 80% of its net assets in equity securities, including convertible securities. The portfolio managers focus on undervalued equity securities.

Fund Financial Information

36. The net assets of each Fund as of December 31, 2003 were as follows:

Fund	Net assets
Templeton Foreign	$697,780,000
Hancock International	98,917,000
Templeton Developing	306,406,000
Hancock International Opportunities	87,288,000
AIM V.I. Growth	363,992,000
AIM V.I. Premier Equity	1,530,359,000

37. Of the net assets shown above for each Replaced Fund, the following amounts were attributable to Contracts, and thus would have been transferred pursuant to the Substitutions described herein: Templeton Foreign $7,830,000; Templeton Developing, $3,823,000; and AIM V.I., Growth $27,559,000.

38. The total fees and expenses of the Funds for the twelve months ended December 31, 2003, expressed as an annual percentage of average daily net assets, were as follows:

Fund	Total expenses (including advisory fees and 12b–1 fees) (Percent)
Templeton Foreign	1.13
Hancock International	*.28
Templeton Developing	1.83
Hancock International Opportunities	*1.24
AIM V.I. Growth	.91
AIM Premier Equity	.85

* Includes expense reimbursement. This percentage would otherwise have been .46% for the Hancock International Fund and 1.25% for the Hancock International Opportunities Fund. No expenses or fees for the other funds were waived or reimbursed.

The expense reimbursement arrangements referred to above are provided for in each affected Fund's Investment Management Agreement.

39. The Fund's investment advisory and Rule 12b-1 fee rates (as an annual percentage of average daily net assets) are as follows:

Fund	Advisory fees rate	Rule 12b–1 fee rate
Templeton Foreign	.75% of first $200 million, .675% of next $1.1 billion, and .60% of additional amounts.	.25%.
Hancock International	.18% of the first $100 million, 15% of the next $100 million, and .11% of additional amounts.	None.
Templeton Developing	1.25%	.25%.
Hancock International Opportunities	1.30% of first $20 million, 1.15% of next $30 million, and 1.05% of additional amounts.	None.
AIM V.I. Growth and AIM V.I. Premier Equity	.65% of the first $250 million and .60% of additional amounts	None.

40. Neither the Templeton Foreign Fund nor the Hancock International Fund has achieved performance that is clearly superior or inferior to that of the other.

41. The overall performance record of the Hancock International Opportunities Fund has been superior to that of the Templeton Developing Fund.

42. The overall performance record of the AIM V.I. Premier Equity Fund has been superior to that of the AIM V.I. Growth Fund.

Terms of Substitutions

43. Each Substitution will take place at the applicable Funds' relative per share net asset values determined on the date of the Substitution in accordance with section 22 of the Act and rule 22c–1 thereunder. Each Substitution will be effected by having each Subaccount that invests in a Replaced Fund redeem its shares of the Replaced Fund at the net asset value calculated on the date of the Substitution and purchase shares of the appropriate Replacing Fund at the net asset value calculated on the same date.

44. John Hancock and JHVLICO will pay all expenses and transaction costs of the Substitutions, including all legal, accounting, and brokerage expenses relating to the Substitutions, the below-described disclosure documents, and this application. No costs will be borne directly or indirectly by Contract owners.

45. Affected Contract owners will not incur any fees or charges as a result of the Substitutions, and the Substitutions will result in no change in their accumulated values under their Contracts. Nor will the rights or the obligations of John Hancock or JHVLICO under the Contracts, or the insurance benefits to Contract owners, be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitutions than before the Substitutions.

46. The Substitutions requested in this application will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission or in other supplemental disclosure documents, (collectively, ''Supplements'') and mailed to all affected Contract owners. Each Supplement will give the relevant Contract owners notice of each Substitution that would affect their respective Contracts and will describe the reasons for engaging in that Substitution. The Supplements will also inform existing Contract owners with values allocated to a Subaccount investing in a Replaced Fund that no additional amounts may be allocated to the Subaccounts that invest in that Fund on or after the date of Substitution.

47. In addition, the affected Contract owners will have (and the Supplements will inform them that they have) an opportunity to reallocate their accumulated value:

- Prior to a Substitution, from the Subaccount investing in the Replaced Fund in that Substitution, or
- For 30 days after a Substitution, from a Subaccount investing in the Replacing Fund in that Substitution

to one or more Subaccounts investing in other Funds available under the applicable Contract without the reallocation resulting in any transfer charge or limitation, counting toward the Lifetime Cap, or diminishing the number of free transfers that otherwise may be made in a given Contract year.

48. Each affected Contract owner will also be provided with a prospectus for each relevant Replacing Fund, which will accompany or precede the Supplement discussed above.

49. Within five days after a Substitution, John Hancock and JHVLICO each will send to its affected Contract owners written confirmation that the Substitutions have occurred. The confirmations will also identify the shares of the Replaced Portfolios that have been eliminated and the shares of the Replacing Portfolios that have been substituted. That confirmation will reiterate the free transfer rights disclosed in the Supplements that such owners will have previously received.

50. The Substitutions will in no way alter the tax treatment of owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

Applicants' Legal Analysis

1. According to Applicants, the legislative history makes it clear that the purpose of section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer. Applicants state that section 26(c) does this by preventing unscrutinized substitutions, which might, in effect, force shareholders dissatisfied with the replacing security to redeem their shares, thereby possibly incurring either a loss of any sales load deducted from their original investment, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants submit that all of the Substitutions will benefit Contract owners by moving them to Funds with lower overall expenses and equal or better performance record and prospects.

3. Applicants also contend that the investment characteristics of each Replacing Fund are very similar to those of the corresponding Replaced Fund. In this connection, Applicants point out that the Hancock International Opportunities Fund is somewhat more conservative than the Templeton Developing Fund, and that the AIM V.I. Premier Equity Fund is somewhat more conservative than the AIM V.I. Growth Fund. However, Applicants assert that the Hancock International Fund should not be considered to be either more or less conservative than the Templeton Foreign Fund.

4. Applicants assert that the Substitutions will be effected in a manner that has no adverse economic consequences for Contract owners. In this regard, Applicants will afford affected Contract owners protection against increased expenses and changes, under terms described in Applicants' Condition 1, below.

5. Applicants note that Contract owners who do not wish to participate in a Replacing Fund will have an opportunity to reallocate their accumulated value among other available Subaccounts without the imposition of any charge or limitation.

6. The Substitution from AIM V.I. Growth Fund is to the much larger AIM V.I. Premier Equity Fund, which, according to Applicants, has potential advantages to Contract owners in terms of economies of scale and diversification of portfolio investments. Applicants acknowledge that The Templeton Developing Fund is larger than the Hancock International Opportunities Fund and that the Templeton Foreign Fund is larger than the Hancock International Fund, which would replace it. Nevertheless, Applicants point out that, even without any reimbursement arrangement, the expense ratio of each Replaced Fund is higher than that of the corresponding Replacing Fund.

7. To summarize, Applicants submit (a) that the Substitutions will benefit the affected Contract owners and will not entail any of the abuses against which section 26(c) is addressed, and (b) that the approvals Applicants request under section 26(c) are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

As conditions to the approvals that Applicants seek,

1. For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into the Hancock International Fund and the Hancock International Opportunities Fund, each of John Hancock and JHVLICO will adjust the Contract values invested in either of such Funds as a result of the Substitutions, to the extent necessary to effectively reimburse the affected owners for their proportionate share of any amount by which the annual rate of the Replacing Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of:

- The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus
- The annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

2. For a period of three years following the date of the Substitution of the AIM V.I. Premier Equity Fund for the AIM V.I. Growth Fund, neither John Hancock nor JHVLICO will receive any direct or indirect benefits from AIM V.I. Premier Equity Fund, any investment adviser or underwriter to that Fund, or any ''affiliated person'' (as that term is in section 2(a)(3) of the Act) of any of them, that exceed the rate of any benefits that such insurance company directly or indirectly has been receiving from AIM V.I. Growth Fund, any investment adviser or underwriter to that Fund, or any affiliated person of any of them. For this purpose, ''benefits'' shall be construed to include any investment advisory fees, payments pursuant to rule 12b–1 plans, shareholder or other service fees,

administrative fees, revenue sharing payments, or other similar payments in connection with assets subject to the Substitution (whether such benefits are with respect to the AIM V.I. Premier Equity Fund or part of an overall relationship with AIM V.I. Funds, any investment adviser or underwriter to any of such Fund, or any affiliated person of any of them). In this connection, Applicants also represent that neither such Substitution nor the selection of AIM V.I. Premier Equity Fund as a Replacing Fund have been motivated by the receipt or promised receipt by John Hancock, JHVLICO or any of their affiliated persons of any benefit or other thing of value from AIM V.I. Premier Equity Fund, any investment adviser or underwriter to such Fund, or any affiliated person of any of them.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9261 Filed 4–14–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47650; File No. SR–MSRB–2003–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on April 7, 2003, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2003–02) (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 with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

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 text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase price transparency for municipal securities by increasing the amount of price data available on the day after trade date.

Background Information

Since the implementation of the inter-dealer trade reporting system in 1995, the MSRB has been increasing price transparency in the municipal securities market in measured steps.[2] The first price transparency report was a T+1 report that summarized high, low and average inter-dealer prices for issues that met a trading threshold of four or more trades in the inter-dealer market. In 1998, the MSRB implemented the customer transaction reporting system and customer transaction data was added to the T+1 summary report. The trading threshold of four trades was retained, but since it applied regardless of whether the trades were inter-dealer or customer, many more issues met the trading threshold and were subject to price reporting. In January 2000, the MSRB further enhanced the T+1 report by publishing individual transaction data (rather than high, low and average prices) for each issue contained in the report.

In October 2000 the MSRB began offering a comprehensive transaction report, which lists all municipal securities transactions (regardless of frequency of trading) and includes late-reported trades, inter-dealer trades compared after trade date, and transaction data corrected by dealers after trade date. The Comprehensive Report began with a minimum one-month delay in trade publication. That delay has gradually been reduced such that the report currently is disseminated on a daily basis, one week after trade date. To make more trade data available on a T+1 basis, in 2002, the MSRB began the process of lowering the trading threshold in the T+1 Daily Report. In May 2002, the MSRB changed the trading threshold to three trades.[3] In November 2002, the trading threshold was lowered to two trades.[4]

The T+1 Daily Report and the Comprehensive Report have been well received by market professionals seeking information on market price levels and trading activity for individual securities.[5] The reports have garnered greater and greater use over time, both with market professionals and through free, customer-oriented outlets such as ''InvestingInBonds.com'' operated by The Bond Market Association (''TBMA''). At this time, in preparation for the move to real-time price transparency in mid-2004, the MSRB believes that the trading threshold in the T+1 Daily Reports should be eliminated to further increase the price transparency that is available on T+1.

Proposed Changes in the T+1 Daily Report

The MSRB has noted since the outset of its transparency initiative that, as the market obtains experience with price transparency, price reports eventually would need to occur on a more contemporaneous and comprehensive basis, culminating with real-time transaction reporting.[6] The proposal to change the T+1 Daily Report at this time is part of the MSRB's longstanding plan to introduce transparency in measured steps, allowing the market time to adjust to new situations presented by each new level of price transparency. As an example, when price reports were first introduced in 1995, the MSRB was concerned that an observer might be misled if he or she considered an isolated transaction or pair of transactions as providing the same

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] This plan has been discussed in many notices since 1994. *See, e.g.,* ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994).

[3] *See* Release No. 34–45861 (May 1, 2002), 67 FR 30989.

[4] *See* Release No. 34–46819 (November 12, 2002), 67 FR 69779.

[5] Currently, the MSRB has twenty-four subscribers to the T+1 Daily Report and fifty-one to Comprehensive Report.

[6] *See, e.g.,* ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994).

indicator of ''market price'' as a stock exchange quotation. The MSRB believes that, considering the unique nature of the municipal securities market, the market has adapted very well to price transparency. The MSRB is not aware of any problems occurring similar to the concerns expressed in 1995. The reception of the Comprehensive Report and the previous lowering of trading thresholds on the T+1 Daily Report has been positive and the use of the data in those reports by market professionals and pricing services has increased the efficiency and accuracy with which issues are priced in the secondary market.

The proposed rule change would increase substantially the number of trades and issues appearing each day on the T+1 Daily Report. On a typical trading day, dealers report approximately 26,000 transactions in 10,000 issues, with a total par value traded of about $9.5 billion.[7] The present T+1 Daily Report, with a trading threshold of two or more trades per day, includes an average of 19,760 trades in 5,600 issues, with a total par value of about $7.7 billion. Currently, only about 76% of transactions reported on trade date are shown on the report. Under the proposed rule change, all trades reported by dealers on trade date would be made visible on T+1.

Although the MSRB believes it is appropriate to increase T+1 transparency at this time, and to move forward with its plans for real-time trade reporting in mid-2004, the MSRB also is mindful of concerns expressed by dealers that further increases in transparency on a more contemporaneous basis could have an effect on liquidity. One concern sometimes noted is that because of the nature of the municipal securities market, including the prevalence of thinly traded issues, it sometimes is possible to identify institutional investors and dealers by the exact par value given on trade reports. For example, it might be common market knowledge that a $4.25 million position in an issue initially was purchased in the primary market by a specific institution. Trade reports in the secondary market showing this exact par value later being sold then could reveal the identity of that party as well as the price received. Where the market for a specific security is thin and only one or two dealers are active, revealing the exact par amount also may convey information about a dealer's inventory (*i.e.*, size of position and acquisition cost). Other dealers may use this information to trade against the dealer's position, reducing the incentive for a dealer to take large positions in these circumstances.

In response to these concerns, the MSRB proposes to take a step similar to that used by the NASD's ''TRACE'' system in the corporate bond market and to display par value of large trades with a large trade indicator rather than the exact par value.[8] While this will result in less information being made visible on T+1 about par value traded, the MSRB believes that it will help to preserve the anonymity of trading parties and will not detract in a substantial way from the benefits of the price transparency it provides.

The enhanced Daily Report with the frequently traded threshold removed would replace the current T+1 Daily Report and would be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions would continue. New subscriptions would continue to be available free to parties who sign a subscription agreement. In addition, recent reports would continue to be available for examination, also free of charge, at the MSRB's Public Access Facility in Alexandria, VA.

The MSRB will continue to produce its Comprehensive Report on a one-week delay basis with details about all transactions traded one-week prior. The Comprehensive Report will continue to provide information on the size of each transaction including the exact par amount reported to the MSRB on transactions in amounts greater than one million dollars. The Comprehensive Report also will continue to be useful since it will include details of transactions reported to the MSRB late, inter-dealer trades compared after trade date, and any transaction data corrected by dealers after trade date.

Implementation Schedule

The enhanced report would be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation would not exceed four weeks.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

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 in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Member, Participants, or Others

Written comments on the proposed rule change were not solicited, but the MSRB had earlier received a copy of a comment letter from TBMA to the Commission in reference to proposed rule change SR–MSRB–2002–07 regarding shortening the delay in publication of the Comprehensive Report from two weeks after trade date to a one-week delay.[9] In its letter, the TBMA expressed its continued support for the MSRB's steps to expand transparency in the municipal securities market. TBMA also stated a concern that price dissemination on a next-day basis for all issues that trade only once per day would not necessarily provide useful information to investors and other market participants or could adversely affect liquidity or might be misleading.

As noted above, the final reduction of the T+1 trading threshold is part of a long-term plan for measured increases in transparency. The Board believes that prior experience with the program indicates both that the additional information provided by the proposed rule change will be useful and will not be misconstrued by users of the data, who now have experience with the price information and know how to interpret it.

As noted above, the MSRB also has considered the concerns expressed by the TBMA that further increases in transparency on a more contemporaneous basis could have an effect on liquidity. The MSRB believes that the proposal to display par value of transactions over one million dollars with a large trade indicator rather than exact par value will ameliorate these concerns.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[7] This baseline data is based upon market activity from April 1, 2001 through July 31, 2001.

[8] *See* NASD Notice to Members 01–18, ''Fixed Income Transaction Reporting and Dissemiantion,'' March 2001.

[9] *See* letter from Frank Chin, Chair, Municipal Executive Committee, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2002.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, 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 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–2002–14 and should be submitted by May 6, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9109 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47635; File No. SR–NASD–2003–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify the Transaction Credit Program for Exchange-Listed Securities

April 4, 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 31, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 3, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change to NASD Rule 7010(c)(2). The proposed rule change responds to the decision of the Consolidated Tape Association to change the way participants in the CT/CQ Plans are charged for the capacity expense attributable to each participant. Nasdaq proposes to amend NASD Rule 7010(c) in order to maintain the same distribution of transaction credits that exists today for InterMarket trading. Nasdaq will make the rule change effective upon the distribution of revenue for the first quarter of 2003.[7]

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized.*

* * * * *

7010. System Services

(a)–(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit

NASD members that trade securities listed on the NYSE (''Tape A'') and Amex (''Tape B'') in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions *after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage.* An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

(d)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 2, 2003 (''Amendment No. 1). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.196–19b–4(f)(2).

[6] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

[7] Nasdaq expects that the Consolidated Tape Association will distribute revenue in the first week of May 2003.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC (''Amex''). The InterMarket competes with regional exchanges like the Chicago Stock Exchange, Inc., the Boston Stock Exchange, Inc., and the Cincinnati Stock Exchange, Inc. for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System (''CAES''), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the InterMarket Trading System (''ITS''), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[8]

Nasdaq proposes to modify the InterMarket Transaction Credit Program (the ''Program''). Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (''CTA''), by providing a transaction credit to members who engage in over the counter (''OTC'') trading activity in CTA-eligible securities. Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 50% of the revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA, the other representing 50% of the revenue received from the CTA for reporting Amex trades.

On November 22, 2002, the CTA met and unanimously approved a modification to its capacity planning and payment process. As a result of this modification, Nasdaq and other CTA participants will incur CTA expenses based on predicted capacity rather than on an ex-post basis. Further, participants will be billed this cost directly as opposed to CTA deducting all operating costs from the Consolidated Tape (''CT'') and Consolidated Quotation (''CQ'') revenues collected. This is a change from the prior CTA practice of deducting operational system costs directly from the CT and CQ gross income available for distribution prior to the disbursement of transaction credits to plan participants.

Nasdaq proposes to amend its transaction credit formula in order to adjust to this CTA billing change. Specifically, prior to Nasdaq distributing 50% of data revenues it receives from CTA, Nasdaq will deduct the capacity expense allocated to Nasdaq by the CTA. Nasdaq will allocate this capacity expense to Tape A and Tape B according to each tape's percentage of total trades executed on Nasdaq.[9] Deducting the capacity expense prior to distributing tape revenue effectively preserves the current arrangements, whereby Nasdaq and its InterMarket members share these capacity costs.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the Act, including section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed rule change, as amended, will maintain the current cost of conducting business through InterMarket for members that provide liquidity through ITS or CAES. Nasdaq believes that continuing to encourage members to provide liquidity will enhance the efficiency of InterMarket and benefit investors whose trades are routed to InterMarket by increasing the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective on April 3, 2003, upon filing of Amendment No. 1 to the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] in that it establishes or changes a due, fee, or other charge imposed by the Nasdaq. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change, as amended, 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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–63 and should be submitted by May 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9108 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* CAES/ITS User Guide, p. 5, at *www.intermarket.nasdaqtrader.com.*

[9] For example, if Nasdaq incurs $100,000 in capacity expenses, and its members execute 700 transactions in Tape A securities and 300 transactions in Tape B securities, Nasdaq will allocate $70,000 of capacity expense to Tape A and $30,000 to Tape B.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47652: File No. SR–NYSE–2003–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading ELDS on the Exchange

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2003, the New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') filed with the Securities and Exchange Commission (the ''SEC'' or the ''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 and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend section 703.21 of the Exchange's Listed Company Manual relating to the listing and trading of equity-linked debt securities (''ELDS'') on the Exchange. The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Listed Company Manual

* * * * *

703.00 Subsequent Listing Applications and Debt Securities Applications

* * * * *

703.21 Equity-Linked Debt Securities

The Exchange will consider listing equity-linked debt securities (''ELDS'') that meet the criteria of this paragraph. ''Equity-linked debt securities'' are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock[or], non-convertible preferred stock, *common units of a master limited partnership or any other common equity security of a type classified for trading as stocks by the Exchange.*

(A) through (D)—No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend section 703.21 of the Exchange's Listed Company Manual (the ''Manual'') relating to the listing and trading of equity-linked debt securities (''ELDS'') on the Exchange. The Exchange is proposing to clarify that the definition of ELDS covers non-convertible debt of an issuer where the value of the debt is based, at least in part, not only on the value of another issuer's common stock or non-convertible preferred stock, but also on the value of common units of a publicly traded master limited partnership, as well as any other equity security of a type classified for trading as ''stocks'' by the Exchange. The Exchange represents that this terminological clarification is consistent with the intent of the original rule of section 703.21 and should provide issuers with greater transparency regarding the scope of the rule. The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market without having an adverse effect on investor protection.[3]

The Exchange represents that its rules and policies currently applicable to ELDS generally will apply to ELDS linked to limited partnership units and other equity securities.[4]

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with section 6 of the Act,[5] in general, and furthers the objectives of section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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 at 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Securities Exchange Act Release No. 34545, dated August 18, 1994 (the ''Release''), the Commission stated that, except under limited circumstances, the issuance of ELDS relating to any underlying security may not exceed five percent of the total shares outstanding of such underlying security. Footnote 10 of the Release states that the only exceptions to this restriction are where either (1) the issuer of the ELDS and the issuer of the underlying security are affiliated; or (2) the issuer of the ELDS holds an amount of the underlying security at least equal to the amount of the underlying security represented by the ELDS. As required by the SEC under the Release, the maximum percentage of ELDS that may be issued will be evaluated by the Exchange on a case-by-case basis in consultation with, and with the approval of, the staff of the Commission.

[4] An equity security on which the value of the debt is based must meet the requirements of Section 703.21(C) of the Manual.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

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–NYSE–2003–08 and should be submitted by May 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.[8] Specifically, The Commission believes that the proposed change does not raise any significant regulatory issues that were not addressed in the Commission's prior approval orders regarding ELDS. The proposed rule change clarifies the existing listing criteria for ELDS contained in Paragraph 703.21 of the Manual by clarifying that the definition of ELDS covers non-convertible debt of an issuer where the value of the debt is based, at least in part, not only on the value of another issuer's common stock or non-convertible preferred stock, but also on the value of common units of a publicly traded master limited partnership, as well as any other equity security of a type classified for trading as ''stocks'' by the Exchange. The Commission notes that an equity security on which the value of the debt is based must meet the requirements of section 703.21(c). The Commission believes that this change is consistent with the intent of the original rule of section 703.21 and will provide issuers with greater transparency regarding the scope of the rule.

NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate the listing and trading of ELDS based on publicly traded master limited partnerships. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because these products are similar to other ELDS currently trading on NYSE.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2003–08), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Employee Work Activity Questionnaire—20 CFR, Subpart P, 404.1574 and .1592—0960–0483. Form SSA–3033 is used to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date of disability. When a possible unsuccessful work attempt or nonspecific subsidy is involved, Form SSA-3033 will be used to request a description of the employee's work effort. The respondents are employers of Old-Age and Survivors Disability Insurance (OASDI) and Supplemental Security Income (SSI) disability applicants and beneficiaries.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,750 hours.

2. Request for Internet Services Representative Payee Report—20 CFR 401.45—0960–0668.

Background

SSA is testing the Internet Representative Payee Report form (I623) that electronically reports on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipients. In support of this process, a proof of concept (POC) test limited to 40 organizational representative payees use the I623 to complete and file the representative payee report instead of using the paper SSA–623. Initially SSA projected a 6-month POC test, but is planning to expand the POC to a full operational year.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and

Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizational representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of request: Extension of an OMB-approved Information Collection.

Number of Respondents: 40 organizations.

Frequency of Response: 117.5 per respondent.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,175 hours.

3. Statement of Claimant or Other Person—0960–0045. In special situations, when there is no standard form or questionnaire, Form SSA–795 is used by SSA to obtain information from claimants or other persons having knowledge of facts in connection with many aspects of the Social Security or SSI programs. The information requested on form SSA–795 must be of sufficient importance that a signed statement, including a penalty clause, is necessary. The information collected is used to process such issues as claims for benefits or continuing eligibility, benefit amount, insured status, use of funds by a representative payee or a myriad of other program-related matters. The most typical respondents are applicants for Social Security or SSI benefits or beneficiaries of these programs. However, respondents could also include friends and relatives of the involved parties, coworkers, neighbors, or anyone else in a position to provide information pertinent to the issue(s).

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 76,375 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Claimant's Medications—20 CFR, Subpart P, 404.1512 and Subpart I, 416.912—0960–0289. The information on Form HA–4632 is used to process title II and title XVI disability claims. Claimants provide an updated list of medications using form HA–4632. This information enables the Administrative Law Judge who conducts the hearing to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant?s medical treatment. The respondents are applicants for title II and title XVI benefits.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

2. Letter to Employer Requesting Wage Information—0960–0138. Form SSA—L4201–U2 is used to collect wage data from employers to establish and/or verify wage information for SSI claimants, beneficiaries and deemors. SSA uses the data to determine if an individual is eligible for SSI and, if so, to determine the amount of the payment due. The respondents are employers of applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

Dated: April 8, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–9085 Filed 4–14–03; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative (''USTR'') in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to general note 12(t) and chapters 29, 42, 64, 98, and 99 of the Harmonized Tariff Schedule of the United States (''HTS''), as set forth in the annex to this notice. These modifications correct inadvertent errors and omissions, so that the intended tariff treatment is provided, in: (1) The rules of origin for certain goods of chapter 34 under the North American Free Trade Agreement (''NAFTA''); (2) the tariff provisions previously proclaimed in chapter 29 to cover particular chemical products; (3) chapter 42 for goods of beneficiary countries of the Andean Trade Preference Act; (4) the named subheadings of heading 6406 of the HTS for goods of Jordan; (5) note 3(b) to subchapter XIX of chapter 98 for textile and apparel goods eligible for special tariff benefits under the African Growth and Opportunity Act; (6) note 3(b) to subchapter XX of chapter 98 for goods eligible for special tariff benefits under the United States-Caribbean Basin Trade Partnership Act; and (7) chapter 99 for certain steel products.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates provided in the annex sections.

FOR FURTHER INFORMATION CONTACT: Katharine J. Mueller, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–3581.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 7515 (December 18, 2001) modified the HTS, pursuant to section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)), to reflect in the HTS the amendments made to the International Convention on the Harmonized Commodity Description and Coding System. Conforming modifications in the heading-specific rules of origin under the NAFTA were proclaimed in order to continue to accord the previously agreed tariff treatment to originating goods of Canada and of Mexico. In modifying these rules, which are enumerated in HTS general note 12(t), a tariff classification rule applicable to goods falling in certain subheadings of heading 3401 was inadvertently deleted.

Presidential Proclamation 6763 (December 23, 1994) implemented the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations (60 FR 1007), including the tariff treatment that was necessary or appropriate to carry out Schedule XX-United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade. Among the provisions created in Section A of

the Annex to that proclamation was subheading 2916.31.05, covering p-Sulfobenzoic acid, potassium salt. Because that chemical does not properly fall under the immediately superior text ''benzoic acid and its salts,'' it cannot receive the previously agreed tariff treatment contained in Schedule XX, and the product is being added to an appropriate subheading under heading 2916 so that such tariff treatment can be accorded.

On December 31, 2002, the USTR published a **Federal Register** notice (67 FR 79954) making several technical corrections, including changes to (1) subheadings in chapters 42, 46, 61, 62 of the HTS with respect to goods of beneficiary countries of the Andean Trade Preference Act to remedy technical errors introduced in Presidential Proclamation 7616 of October 31, 2002, implementing the preferential tariff treatment authorized by the Andean Trade Promotion and Drug Eradication Act; (2) subheadings in chapter 64 of the HTS with respect to goods of Jordan to remedy technical errors introduced in Presidential Proclamation 7512 of December 7, 2001, implementing the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area. These corrections were intended to ensure that the intended tariff treatment was provided.

Since the publication of this **Federal Register** notice, it has come to the attention of USTR that the technical correction made with respect to the one of the chapter 42 subheadings was incorrectly stated, so that the intended modification to the tariff schedule was not made. Further, two of the chapter 64 subheadings were incorrectly stated; HTS subheadings 6404.10.30 and 6404.10.35, which do not exist, were listed, rather than the correct HTS subheadings 6406.10.30 and 6406.10.35.

Presidential Proclamation 7626 (November 13, 2002) implemented modifications in the preferential tariff treatment provided under provisions of the Caribbean Basin Economic Recovery Act, pursuant to the United States-Caribbean Basin Trade Partnership Act, and of the African Growth and Opportunity Act. For each program, a conforming change to note 3(b) of the subchapter notes was inadvertently omitted.

Presidential Proclamation 7529 (March 5, 2002) implemented additional tariffs and tariff-rate quotas on certain steel products, and provided exemptions for products of certain countries and exclusions for particular products of a type otherwise covered by the tariffs or TRQs.

Additional product exclusions were established in a notice issued by the USTR and published in the **Federal Register** on March 31, 2003 (68 FR 15494). A conforming change included in that notice inadvertently contained errors in adding reference to new HTS provisions established to implement certain product exclusions.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth below shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date noted.

Accordingly, the HTS is modified as provided in the annex to this notice, effective with respect to gods entered, or withdrawn from warehouse for consumption, on or after the dates. provided therein.

Robert B. Zoellick,

United States Trade Representative.

Annex

1. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 10, 2002, general note 12(t) is modified by redesignating tariff classification rule 1 (as inserted by Proclamation 7515) as rule 1A, and by inserting in numerical sequence the following tariff classification rule immediately below the side heading which reads ''*Chapter 34*'':

''1. (A) A change to subheadings 3401.11 through 3401.20 from any other heading; or

(B) A change to subheadings 3401.11 through 3401.20 from any other subheading within heading 3401, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.''

2. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and prior to the date that is fifteen days after the date of publication of this notice in the **Federal Register**, the entries of which are unliquidated on the latter date, and effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the date of publication of this notice in the **Federal Register**, heading 2916 of the HTS is modified as follows:

(A) The superior text appearing immediately below that of subheading 2916.31 and reading ''Benzoic acid and its salts:'' and subheadings 2916.31.05 and 2916.31.15 are deleted, and the following new subheading is inserted in numerical sequence, with its article description at the same level of indentation as the immediately superior text ''Other:'' to subheading 2916.31.20, with the material inserted in the HTS in the columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'' and ''Rates of Duty 2'':

[2916.31]	[Unsaturated...:] [Aromatic...:] [Benzoic...:]			
''2916.31.10	Benzoic acid and its salts ...	6.5%	Free (A*,CA,E,IL,J,MX) 1.6% (JO)	15.4¢/kg+40%''

Conforming changes: General note 4(d) is modified by deleting ''2916.31.15 India'' and by inserting in lieu thereof ''2916.31.10 India''.

(B) Subheading 2916.31.10, as established in subdivision (A) above, shall be accorded all staged duty reductions previously proclaimed for subheading 2916.31.15.

(C) Subheading 2916.39.05 is redesignated as 2916.39.04 and its article description is modified to read as follows, at the same level of indentation:

''m-Chloroperoxybenzoic acid; and p-Sulfobenzoic acid, potassium salt''

3. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, for HTS subheading 4202.32.80, the Rates of Duty 1-Special subcolumn is modified by deleting the rate of duty and the following symbol ''J'' parentheses.

4. Effective with respect to goods of Jordan entered, or withdrawn from warehouse for consumption, on or after December 17, 2001, for HTS subheadings 6406.10.30 and 6406.10.35, the expression ''¢kg'' is deleted at each occurrence from the Rates of Duty 1-Special subcolumn for the duty rate followed by the symbol ''JO'' in parentheses and ''¢pr.'' is inserted in lieu thereof; and such modifications shall likewise be made in the years 2003 through 2010, inclusive, for such special duty rate for goods of Jordan.

5. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 13, 2002,

Note 3(b) to subchapter XIX of chapter 98 of the HTS is amended by deleting the comma after the phrase ''subheading 9819.11.06'' and inserting the phrase ''and 9819.11.30,''.

6. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 13, 2002, Note 3(b) to subchapter XX of chapter 98 of the HTS is amended by deleting the phrase ''9820.11.06 and 9820.11.18'', and inserting in lieu thereof, ''9820.11.06, 9820.11.18, and 9820.11.33,''.

7. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2003, subheading 9903.74.01 is modified by deleting ''9903.77.78'' and by inserting in lieu thereof ''9903.77.84'', and by inserting at the end of the article description ''and 9903.82.10 through 9903.82.17''.

[FR Doc. 03–9221 Filed 4–14–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.785–1B, Flight Attendant Seat and Torso Restraint System Installations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.785–1B, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides information and guidance regarding an acceptable means, but not the only means, of compliance with the portions of §§ 25.785 and 121.311 of 14 CFR Part 25 which deal with flight attendant seats. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.785–1B and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. As this AC is a revision of an existing document, where the only changes are adding a new paragraph 9, Direct View, and updating paragraph 5, Definition of Terms, we request you limit your comments to these areas only. The rest of the AC remains unchanged. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft/air_index.htm*, by taking the following steps: Under ''Aircraft Certification Related Information'' click on ''Advisory Circulars.'' Under ''Search Help'' click on ''Related Links.'' Then click on ''Draft Advisory Circulars.'' Then under ''Search Help'' click on ''Open for Comment.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

The guidelines incorporated in the AC are intended to address the adequacy of new designs and are not intended to require that in-service airplanes be modified solely for the purpose of meeting them. Voluntary modifications to existing cabins are not required to meet the new criteria but modifiers should incorporate them to the extent practical considering the scope and intent of the voluntary modification.

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 03–9079 Filed 4–14–03; 8:45 am]

BILLING CODE 9079–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditional, Reservations and Restrictions for Homestead General Aviation Airport, Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 152.93 acres) at the Homestead General Aviation Airport, Homestead, FL from all conditions, reservations, and restrictions. The release of property will allow Miami Dade County to dispose of the property for other than aeronautical purposes. Land parcel number 1, containing 85.70 acres on the southeast corner of theoretical SW., 232nd Avenue and SW., 280th Street, unincorporated Miami-Dade County, Florida. Land parcel number 2, containing 67.23 acres on the northeast corner of theoretical SW., 232nd Avenue and theoretical SW., 296th Street, unincorporated Miami-Dade County, Florida. The parcel is currently designated as aeronautical use property. The property will be disposed of for roadway purposes.

The fair market value of the property has been determined by appraisal to be $228,500. In exchange for the property, the airport will receive funds equal to the fair market value as determined by the appraisal.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: May 15, 2003.

ADDRESSES: Documents are available for review at the Airport Manager's office, Miami Dade Aviation Department, Miami International Airport, Miami, FL 33159 and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950

Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

Bart Vernace,

Assistant Manager, Orlando Airports District Office Southern Region.

[FR Doc. 03–9182 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Airports; Notice of Submission Deadline for International Slots for the Winter 2003/2004 Scheduling Season

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports. One element of the final rule established that the deadline for submission of requests for international slots would be published in a **Federal Register** notice for each scheduling season. The purpose of the amendment is for the FAAA deadline for international slot requests to coincide with the International Air Transport Association (IATA) deadline for submission of international requests. For the Winter 2003/2004 Scheduling Season, the IATA submission deadline is May 18, 2003, which falls on a Sunday. Therefore, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is May 19, 2003.

DATES: Requests for international slots must be submitted no later than May 19, 2003.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–220, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; e-mail address: *7–AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3134.

Issued on April 8, 2003, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 03–9184 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–17]

Petition for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of a prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 8, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–14832.

Petitioner: Air Platforms, Inc.

Section of 14 CFR Affected: 14 CFR 21.25(a), 36, and 91.313(e)(1) and (2).

Description of Relief Sought/Disposition: To allow Air Platforms, Inc. to gain a restricted category airworthiness certificate for its English Electric Canberra B.6 airplanes without meeting the noise limits of part 36. In addition, it would have allowed Air Platforms, Inc. to fly its Canberras over densely populated areas and along congested airways.

Denial, 3/26/2003, Exemption No. 8006

[FR Doc. 03–9075 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–18]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 5, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–9185 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 22–25, 2003 starting at 9 a.m. (unless stated otherwise)

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Specific working group sessions will be held on April 22, 23 & 25.* The plenary agenda will include:

April 24

- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
  - WG–1, Operations & Implementation
  - WG–2, Traffic Information Service—Broadcast (TIS–B)
  - WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
  - WG–4, Application Technical Requirements
  - WG–5, Universal Access Transceiver (UAT) MOPS
  - WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
- EUROCAE WG–51 Activity Report
- Review ASA MASPS
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 31, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9073 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on April 29–30, 2003, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- April 29:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of Working Group 5 (WG) Document from Program Management Committee
  - Resolve Final Review and Comments (FRAC), for Change 1, DO–284, Next Generation Air/Ground Communication System (NEXCOM) Safety and Performance Requirements (SPR)
- April 30:
  - Continue as necessary with resolution of FRAC comments of Change 1, DO–284
  - Closing Plenary Session (Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9074 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–02–C–00–MTJ) To Impose and To Use a Passenger Facility Charge (PFC) at the Montrose Regional Airport, Submitted by the County of Montrose, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Montrose Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Acting Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Brownlee, Director of Aviation, at the following address: Montrose Regional

Airport, 2100 Airport Road, Montrose, Colorado 81401.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Montrose Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (03–02–C–00–MTJ) to impose and use a PFC at the Montrose Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 2, 2003, the FAA determined that the application to impose a PFC submitted by the County of Montrose, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 5, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 5, 2003.

Proposed charge expiration date: March 10, 2006.

Total requested for use approval: $821,726.89.

Brief description of proposed projects: Construct portion of Taxiway A, rehabilitate Taxiway B and a portion of the general aviation apron, construct an aircraft rescue and fire fighting (ARFF)/snow removal equipment (SRE) building, rehabilitate portion of general aviation apron (Phases I and II), rehabilitate portion of general aviation apron and Runway 13/31, extend Runway 17 safety area.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Montrose Regional Airport.

Issued in Renton, Washington, on April 2, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–9183 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–02–C–00–VPS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Okaloosa Regional Airport, Valparaiso, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry Sealy, Airport Director of the County of Okaloosa, FL at the following address: Okaloosa Regional Airport, State Road 85, Eglin AFB, FL, 32542.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Okaloosa, FL under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 2, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Okaloosa County, FL was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 17, 2003.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2018.

Proposed charge expiration date: December 1, 2019.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $2,885,235.

Brief description of proposed project(s): Expand surface parking lot, project formulation costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Charter operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration Southern Region Headquarters, Airports Division ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Okaloosa Regional Airport.

Issued in Orlando, FL, on April 2, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–9080 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2002–005]

Proposed Policy on 14 CFR 23.1357(d), Regarding Circuit Breakers and Fuses for Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy on reviewing certification plans regarding Circuit

Breakers and Fuses for certification. This notice advises the public, especially manufacturers of normal, utility, and acrobatic category airplanes, and commuter category airplanes and their suppliers, that the FAA intends to adopt a policy concerning reviewing certification plans regarding Circuit Breakers and Fuses for certification. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATE: Send your comments by May 15, 2003.

DISCUSSION: We are making this proposed policy statement available to the public and all manufacturers for their comments.

ADDRESSES: Copies of the proposed policy statement, PS–ACE100–2002–005, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed policy statement is also available on the Internet at the following address *http://www.airweb.faa.gov/policy.* Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4127; fax: 816–329–4090; e-mail: *wes.ryan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed policy statement. Send any data or views as you may desire. Identify the proposed Policy Statement Number PS–ACE100–2002–005 on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed policy statement PS–ACE100–2002–005'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9176 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–115–04; Exit Bands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy on colored exit bands required by § 25.811(f)(1) and (2).

DATES: The policy was issued by the Transport Airplane Directorate on April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on February 27, 2003 (68 FR 9113). One commenter responded to the request for comments.

Background

The policy further simplifies the certification process pertaining to installation of the required 2-inch colored band outlining the exits on transport category airplanes. These bands are necessary so that rescue personnel can readily recognize exits in the side of the fuselage.

The policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9077 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–111–18

Installation of Transport Category Airplane Flightdeck Liquid Crystal Displays

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on installation of liquid crystal displays (LCD) on transport category airplanes.

DATES: Send your comments on or before May 15, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. John McConnell, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1365; fax (425) 227–1100; e-mail: *john.mcconnell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments data, views or arguments by letter, fax or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–03–111–18.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.

• For each issue, state what specific change you are requesting to the proposed policy.

• Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum clarifies the FAA certification policy on the installation of liquid crystal displays. It addresses the lack of published approved criteria for LCD technology and provides guidance on performance levels that have been found to be acceptable for LCDs used as pilot displays in the flightdeck of transport category airplanes.

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9078 Filed 4–14?–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Clarification and Standardized Policy for Specific Sections of FAA Order 8150.1B, Technical Standard Order Program

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on proposed policy clarification to three specific areas of FAA Order 8150.1B, Technical Standard Order Program. The proposed policy provides guidance to Federal Aviation Administration personnel, Technical Standard Order (TSO) authorization holders and those persons issued letters of TSO design approval, on how to manage incomplete systems, information and data needed when one source receives multiple articles, and general marking requirements.

DATES: Comments must be received on or before May 9, 2003.

ADDRESSES: Comments on the proposed policy may be mailed to: Federal Aviation Administration, Aircraft Certification Service, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. John Petrakis, AIR–120; deliver to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591; or e-mailed to: *John.Petrakis@FAA.GOV.*

FOR FURTHER INFORMATION CONTACT: Mr. John Petrakis, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs Branch, AIR–120, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed policy listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed policy may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for the Director of the Aircraft Certification Service will consider comments specified above before issuing the final policy.

Background

This policy memorandum addresses three specific areas of FAA Order 8150.1B, Technical Standard Order Program. Since the issuance of the order in May 2002, questions concerning (1) the management and marking requirements of incomplete systems, (2) clarification on data needed when multiple articles are shipped to one source, and (3) clarification of general TSO marking requirements.

The information derived from this notice will become effective via a signed memorandum, and will be incorporated into the next revision to FAA Order 8150.1B.

How To Obtain Copies

A copy of the proposed policy may be obtained via the Internet at, *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy of the proposed policy memorandum from Mr. John Petrakis. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC on April 7, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–9076 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These ICRs pertain to 49 CFR parts 225, 229, 241, and 244. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to parts 209, 230, 238, 240, and 260. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

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. 104–13, section 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 display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved: (1) OMB No. 2130–0500, Accident/Incident Reporting and Recordkeeping (49 CFR part 225) (Final Rule) (Forms FRA F6180.54; 55; 55a; 56; 57; 78; 81; 97; 98; 99; 107). The expiration date for this information collection is April 30,

2006. (2) OMB No. 2130–0556, U.S. Locational Requirement For Dispatching U.S. Rail Operations (49 CFR part 241) (Final Rule). The expiration date for this information collection is January 31, 2006. The following information collections were re-approved: (1) OMB No. 2130–0505, Inspection and Maintenance Standards For Steam Locomotives (49 CFR parts 209 and 230). The expiration date for this information collection is January 31, 2006. (2) OMB No. 2130–0548, Railroad Rehabilitation and Improvement Financing Program (49 CFR part 260). The expiration date for this information collection is January 31, 2006.

Additionally, the following information collections were previously approved: (1) OMB No. 2130–0552, Locomotive Cab Sanitation Standards (49 CFR part 229) (Final Rule). The expiration date for this information collection is June 30, 2005. (2) OMB No. 2130–0557, Safety Integration Plans (49 CFR part 244) (Final Rule). The expiration date for this information collection is March 31, 2005. Furthermore, the following information collections were previously re-approved: (1) OMB No. 2130–0517, Supplemental Qualifications Statement For Railroad Safety Inspector Applicants (Form FRA–F–120). The expiration date for this information collection is August 31, 2005. (2) OMB No. 2130–0533, Qualifications For Locomotive Engineers (49 CFR part 240). The expiration date for this information collection is June 30, 2005. (3) OMB No. 2130–0544, Passenger Equipment Safety Standards (49 CFR part 238). The expiration date for this information collection is June 30, 2005.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on April 9, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–9072 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2003–14648]

Applicant: CSX Transportation, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation seeks approval of the proposed modification of the traffic control system (TCS) on the single track Wildwood Lead, milepost 0J2–145.31, near Wauhatchie Alabama, on the Nashville Division, Chattanooga, Subdivision. The proposed change consists of the relocation of the Northbound Absolute Signal from milepost 0J2–145.31 to milepost 0J2–144.75, effectively decreasing the limits of the TCS by approximately .56 mile.

The reason given for the proposed changes is to decrease the limits of the TCS on the Wildwood Lead to accommodate switching moves in Wauhatchie Yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on April 7, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–9071 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 631X)]

CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a line of railroad, known as the Lumber Lead, extending from former Conrail milepost 11.49 to a point at or near former Conrail milepost 11.56, a distance of approximately 0.07 of a mile, in Summit County, OH. The line traverses United States Postal Service Zip Code 44305.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d)

must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 15, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 25, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 5, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 18, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 15, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8926 Filed 4–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Tuesday, April 29, 2003 from 8:30 a.m. to approximately 2:30 pm CST.

ADDRESSES: The meeting will be held in the Grand Ballroom (2nd Floor) of the Chicago Hilton, 720 S. Michigan Avenue, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will examine issues relating to the Postal Service's workforce, including the collective bargaining process and binding arbitration. Witnesses will testify at the invitation of the Commission. At the meeting, the Workforce Subcommittee will report to the Commission. Seating is limited.

Dated: April 11, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–9307 Filed 4–11–03; 10:50 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541.

Revenue Procedure Number: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: Section 13.02(2) concerned taxpayers that filed 3115s under Revenue Procedure 97–27 on or before December 31, 1997. Section 13.02(3) concerned taxpayers that were within an open window period for filing 3115s under Revenue Procedure 92–20 on May 15, 1997. Since taxpayers will no longer be eligible for either provision, those two sections are no longer relevant

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 3 hours, 1 minute.

Estimated Total Annual Burden Hours: 9,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9215 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: Form 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by the IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and farms.

Estimated Number of Respondents: 619,851.

Estimated Time Per Respondent: 4 hr., 35 min.

Estimated Total Annual Burden Hours: 2,840,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9216 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8822

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8822, Change of Address.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Change of Address.

OMB Number: 1545–1163.

Form Number: Form 8822.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue

Service that they have changed their home or business address or business location.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 16 min.

Estimated Total Annual Burden Hours: 387,501.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9217 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–67

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Settlement of Section 351 Contingent Liability Tax Shelter Cases.

OMB Number: 1545–1801.

Revenue Procedure Number: Revenue Procedure 2002–67.

Abstract: Revenue Procedure 2002–67 prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 (''contingent liability transaction''). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals.

Estimated Number of Respondents: 150.

Estimated Average Time Per Respondent: 50 hours.

Estimated Total Annual Reporting Burden: 7,500 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9223 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI)

Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, May 16, 2003 from 1 p.m. EST to 2 p.m. EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9218 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, May 6, 2003 from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9219 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, May 5, 2003 from 1 p.m. PST to 3 p.m. PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9220 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 72

Tuesday, April 15, 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 INTERIOR

Bureau of Indian Affairs

Indian Gaming

Correction

In notice document 03–8560 appearing on page 17072 in the issue of Tuesday, April 8, 2003, make the following correction:

On page 17072, in the second column, in the second line, ''Tulapid'', should read ''Tulalip''.

[FR Doc. C3–8560 Filed 4–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

[EOIR No. 135]

Executive Office for Immigration Review; Notice of Class Action Judgment in Barahona-Gomez v. Ashcroft

Correction

In notice document 03–6691 beginning on page 13727 in the issue of Thursday March 20, 2003, make the following corrections:

1. On page 13727, in the second column, the subject heading is corrected to read as set forth above.

2. On page 13728, in the appendix, in the second column, in paragraph (c)(2), in the seventh and eighth lines, ''October 1, 1995'' should read '' October 1, 1996''.

[FR Doc. C3–6691 Filed 4–14–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 15, 2003

Part II

National Credit Union Administration

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to update chartering policies and streamline documentation. These final amendments are in response to NCUA's more than four years experience with existing chartering and field of membership policies.

DATES: This regulation is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Regina Metz, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: NCUA's current chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1 and IRPS 02–2. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (CUMAA). On December 17, 1998, in response to CUMAA, the NCUA Board issued a final rule on chartering and field of membership. 63 FR 73022, December 30, 1998. When the NCUA Board issued its final rule, it instructed NCUA's Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1. Accordingly, recommendations were made, and final amendments to NCUA's chartering policy were issued by the NCUA Board in 2000 and again in 2002. 65 FR 64512, October 27, 2000; 67 FR 20013, April 24, 2002.

Over the past four years, NCUA's Field of Membership Taskforce has continued to monitor and review the implementation of the Chartering Manual and its amendments in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In connection with this review, last year the NCUA Board issued a proposed rule, with a 60-day comment period, that comprehensively updated the agency's chartering policy. 67 FR 72444, December 5, 2002. The comment period ended on February 3, 2003.

Six hundred and seventy comments were received. Comments were received from 263 federal credit unions, 113 state-chartered credit unions, 131 Florida bankers and 69 other banks, 31 state credit union leagues or trade associations, and 4 national credit union trade associations, 32 credit union members, 14 state bank trade associations and 3 national bank trade associations, 2 members of Congress, 2 law firms, 1 insurance company, 2 credit union service organizations (CUSOs), 1 credit union contractor, 1 institute, and 1 shared service center.

Except for the banks and bank trade associations, most commenters were very supportive of the proposed chartering and field of membership policies, with some commenters suggesting ways they would improve the final rule. Many stated that they appreciated the added flexibility permitted under the proposal, and some addressed how the proposal would afford them the opportunity to diversify their membership and how this would result in decreased economic risk. Besides the bank commenters, four credit unions and the institute opposed the proposal. Two of these commenters believe it would harm small credit unions. After the following discussion of the proposed amendments, there is a separate section devoted to the comments received from the bankers and bank trade associations.

A. Proposed Amendments

1. Overlapping Fields of Membership Among Credit Unions

As stated in the proposal, the NCUA Board has found no empirical evidence to indicate that overlaps have an adverse impact on credit unions and believes overlaps should generally be permitted. Therefore, except for select group expansions for multiple group credit unions, the NCUA Board proposed to eliminate overlap protection and provide the option to all credit unions to remove any existing exclusionary clauses in its charter.

Under the Federal Credit Union Act (the Act), the agency must do an overlap analysis on select group expansions for multiple group credit unions so no significant changes were proposed in this area. 12 U.S.C 1759(f)(2)(D). On select group expansions, however, the NCUA Board stated that overlaps of groups of less than 3,000 should be classified as an incidental overlap and no overlap analysis should be required. The 3,000 threshold is taken directly from the CUMAA.

The NCUA Board also stated if two credit unions want to retain an exclusionary clause that is a business decision for them to make. If, however, one credit union wants the exclusionary clause removed, the NCUA Board stated the request should be approved and should be treated as a housekeeping amendment.

One hundred and twenty-two commenters supported this proposed change. Thirteen commenters opposed the change. They generally opposed this change because they believe it may harm small to mid-size credit unions that cannot compete with the rates and total range of services offered by the larger credit unions.

The NCUA Board is committed to the concept of consumer choice as reflected in CUMAA. NCUA has approved charter expansions that overlap other credit unions for decades, without any evidence that the overlap harms the overlapped credit union. Overlap protection can harm the credit union member by denying consumer choice. By adopting the proposed change, the agency's policy will accurately reflect today's marketplace, which provides many choices in financial services to the consumer. Therefore, the NCUA Board believes it is appropriate to eliminate the remaining overlap protections that still exist in the regulation to the extent permitted by statute. The NCUA Board does not believe this overlap policy will have an adverse impact on small credit unions. Accordingly, the NCUA Board is adopting the proposed change on overlaps in the final rule including the procedure on how to remove existing exclusionary clauses.

The NCUA Board is also eliminating a paperwork relic for credit unions that wish to expand their single occupational or associational common bond. Under the current rule, a single common bond credit union needs to obtain a letter from a group's sponsor indicating that the group wants to be added to the credit union's field of membership. The purpose of this requirement was so that NCUA could

monitor overlaps. Since overlaps are now permitted for single common bond credit unions, this sponsor letter serves no safety and soundness or other policy purpose. A couple of commenters specifically addressed this issue and suggested the elimination of this requirement. Therefore, the NCUA Board is modifying the single common bond expansion procedure for both occupational and associational credit unions. Under the new procedure, a credit union need only state how the common bond is shared and how it will serve the expanded group. The requirement for a sponsor letter is eliminated.

The NCUA Board is also clarifying in the final rule that a single common bond credit union can merge into a multiple common bond credit union if the single common bond credit union is completely overlapped by the multiple common bond credit union. The NCUA Board believes that, if a multiple group credit union has a complete overlap of a single common bond credit union's field of membership, then the two credit unions should be allowed to merge without analyzing the group's ability to form its own credit union. This change is consistent with the new overlap policy as well as previous modifications to merger policy. Chapter 2, section IV.D.1.c is modified accordingly in the final rule.

2. Reasonable Proximity and Service Facility for Select Group Expansions

Under CUMAA, if the formation of a separate credit union is not practicable or consistent with the standards in the Act, then a select group can be included in the ''field of membership of a credit union that is within reasonable proximity to the location of the group.'' 12 U.S.C. 1759(f)(1)(B). The Act does not define a service facility for the purpose of analyzing reasonable proximity. In the proposal, the NCUA Board defined a service facility for multiple group expansions as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed.

In defining reasonable proximity, the NCUA Board has continually stated that the group to be added must be within the ''service area'' of a ''service facility'' of the credit union. After reviewing CUMAA and its legislative history again, the NCUA Board proposed a new definition of a service facility for the purpose of the reasonable proximity analysis. The NCUA Board proposed that a wholly-owned ATM or a shared service facility in which a credit union has an ownership interest constitutes a credit union for the purpose of the reasonable proximity analysis. Under the proposal, underserved areas still require a physical presence other than an ATM or shared service facility.

One hundred and thirty-four commenters agreed with the proposed change. Two commenters who supported expanding the definition of service facility also suggested eliminating the reasonable proximity requirement altogether. Eleven commenters did not agree with the use of an ATM for purposes of the reasonable proximity analysis. One of these commenters opposed the use of shared branch networks for the reasonable proximity analysis. Many of these commenters were concerned that such a definition would harm small credit unions.

Sixty-nine commenters supported the proposal, but recommended NCUA further expand the definition of service facility. Many of these commenters recommended that NCUA change ''wholly owned'' ATM to ''branded'' ATM and also include the web, telephone, and the United States mail as service facilities. A few of these commenters wrote that NCUA should also consider shared or network ATMs as service facilities.

The NCUA Board does not have the legal authority to eliminate the reasonable proximity requirement. The NCUA Board also believes an ownership interest is crucial in analyzing the reasonable proximity requirement for ATMs and shared service facilities. However, the NCUA Board is clarifying that services provided by an ATM are irrelevant to this analysis as long as it is wholly-owned by the credit union.

The NCUA Board believes that the proposed definition of a service facility for determining reasonable proximity is reasonable and is consistent with economic realities of the ''clicks and windows'' age. However, the NCUA Board is clarifying in the final rule that a service facility does not include a credit union's internet web site.

In response to some commenters, the NCUA Board is clarifying in the final rule that the requisite ownership interest can be in a shared service center, a shared service network, or similar organization. Therefore, as long as the credit union has an ownership interest in the service center, network, or similar organization, the credit union can expand around any of them. The credit union does not need to have an ownership interest in the specific service facility. This means, for example, that, if the credit union has an ownership interest in a CUSO, it can expand around any service center connected to the CUSO. This also would allow a participating credit union with an ownership interest in the service facility to expand around other service facilities connected to the shared service network or similar organization.

3. Associational Common Bond

The Chartering Manual defines what constitutes an associational common bond. Under the current definition the group must: (1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership. Other factors were also considered by the agency. The NCUA Board proposed that the three mandatory requirements be eliminated and merged into the list of factors to be considered by the agency. Under the proposal, a consideration of the totality of circumstances would determine whether an associational common bond exists. The NCUA Board also explicitly stated in the proposal that national associations in their entirety qualify for credit union service if the headquarters are within reasonable proximity to the credit union.

One hundred and seven commenters supported the proposed change. Four commenters opposed the proposal. The NCUA Board believes, for the reasons provided in the proposal, that a totality of the circumstances analysis is appropriate in determining an associational common bond and is adopting that approach in the final rule.

Eight commenters specifically approved of the clarification on national associations. Four commenters did not agree with the clarification. In response to concerns raised by some commenters, the NCUA Board is clarifying that current policy already permits a multiple group credit union to add national associations to its field of membership as long as the national association headquarters are within reasonable proximity to the credit union. If a multiple group credit union wishes to add just a chapter of the national association, the office of the chapter must be in reasonable proximity to the credit union. If a credit union is chartered to serve a single association, there is no reasonable proximity requirement. Therefore, the proposed clarification is adopted in the final rule.

The NCUA Board wants to reiterate that associations that are primarily based on client-customer relationships do not qualify as an associational common bond. Finally, the NCUA Board is making some technical wording changes in this section to eliminate possible ambiguities.

4. Occupational Common Bond

The NCUA Board has previously determined that an occupational common bond can also include designations based on employment in a trade, industry or profession (TIP), but because of operational concerns chose not to implement a TIP policy. Having addressed these concerns, the NCUA Board proposed a new definition of occupational common bond based on a TIP.

This type of common bond can include employment at any number of corporations or other legal entities that, while not under common ownership, share a common bond by virtue of producing similar products, providing similar services, sharing the same profession or trade, or participating in the same industry. The common bond of a TIP credit union is not based on a relationship with a single employer, but rather, on the commonality of interests or characteristics of those groups comprising the TIP. Individuals in those groups will share or participate in the same purpose, interest, or endeavor as a result of their employment. If persons in different groups possess common interests that are reasonably tied to a common endeavor or purpose, then the groups can be combined to form a single field of membership and, thus, a single common bond credit union. This commonality of interest constitutes a common bond of trade, industry or profession and meets the statutory requirement of ''one group that has a common bond of occupation.'' 12 U.S.C. 1759(a)(1).

In the proposal, the NCUA Board stated that, while there is some latitude in defining trade, industry, or profession, the group must have a close nexus. Furthermore, the NCUA Board stated that a TIP must be narrowly defined and in most cases, will contain a geographic limitation. The geographic limitation will generally correspond to the credit union's current or planned service area. The NCUA Board limited the TIP to single common bond credit unions and proposed allowing any credit union to convert to a TIP single occupational credit union. Upon such a conversion, the credit union could retain its members of record.

One hundred and seventy commenters supported the TIP proposal. A few commenters who supported the proposal believe that a diverse field of membership should reduce sponsor risk and risk to the National Credit Union Share Insurance Fund. A few commenters expressed concern with how TIP will be implemented. Four commenters opposed the TIP concept because they believe it would hurt small credit unions.

Many commenters provided examples of different TIPs, ranging from an educational TIP to a petroleum TIP. Some of the commenters believed that the general thrust of occupational chartering based upon TIP should be more ''horizontal'' than ''vertical.'' That is, they viewed the TIP proposal as focusing on only some members of a trade or industry, as opposed to everyone working in the same trade or industry. The NCUA Board does not believe that these terms provide a meaningful or relevant distinction and is not using them in the Chartering Manual. In the proposal, the NCUA Board was simply illustrating who could become a member depended on whether the credit union had a professional TIP or an industry TIP. Again, if the TIP is the healthcare industry, everyone working at a hospital would be included in the TIP. If the credit union has a nurses TIP, then only nurses could be served. This is a clear and important distinction. A TIP can be ''vertical'' or ''horizontal,'' but it is critical that a credit union understand which type of occupational common bond it is choosing.

In a similar vein, some commenters asked why a credit union could not serve clerical staff if a TIP is based on a single profession, for example, Certified Public Accountants (CPAs). The answer is that a TIP credit union based on profession or trade can only serve members of the same profession or trade. An engineer TIP can only serve engineers; a teachers TIP can only serve teachers. This is one of the fundamental criteria of a TIP. However, if a TIP is based on an industry, such as healthcare, the credit union can serve physicians, nurses, and administrative staff. Therefore, as stated above, how the TIP is characterized, whether by profession or industry, will be critical in determining who the credit union can serve. If the credit union wants to serve CPAs, it should request a CPA TIP. If the credit union wants to include administrative staff, then it should request a TIP based on the accounting industry.

A few commenters support applying TIP only to single common bond credit unions. Thirty-one commenters recommended applying TIP to multiple common bond credit unions. The NCUA Board believes that a narrow approach is appropriate at this time because expansion of the TIP policy would raise additional operational issues. For this reason, the NCUA Board is limiting this type of occupational common bond to a single common bond credit union.

The NCUA Board stated in the proposal that a credit union converting to a TIP will usually have a geographic limitation that comports with its current or planned service area. Nine commenters opposed a geographic limitation on the TIP occupational common bond. A few commenters requested broad geographic options. A few commenters noted that, for a credit union already serving members nationwide, there should be no geographic limitation. The NCUA Board believes that, initially, a general geographic limitation is necessary for a successful implementation of the TIP policy. However, after considering the commenters' suggestions, the NCUA Board also believes a credit union having a national field of membership or operating in multiple states may request a TIP with no geographic restriction. Accordingly, the NCUA Board has clarified the Chartering Manual to include this concept.

The NCUA Board continues to believe that another fundamental criterion of a TIP common bond is that the group must have a close nexus and a commonality of interests. Because of this requirement, a TIP cannot include third-party vendors and other suppliers and contractors. In this regard, some TIPs might be more limiting than the traditional definition of an occupational common bond. An automobile TIP may include all workers manufacturing automobiles but may not include the steel suppliers or other component suppliers. A healthcare TIP may include all hospital personnel but may not include employees of unaffiliated retail pharmacies. Furthermore, a TIP common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation or employer.

For example, all Army personnel would qualify as a single common bond employer group or TIP, but all nurses would only qualify as a TIP.

One commenter requested that a company that has one large, predominant industry and some smaller industries still be allowed to be included in a single industrial common bond. The NCUA Board believes such a company would not have the close nexus and commonality of interest required of a TIP occupational common bond based on industry. However, this same company could qualify for a traditional single employer occupational common bond.

A few commenters requested information about the scope of the TIP business plan. One commenter also

asked how a credit union will verify an individual as a TIP member. When a credit union is chartered or converts to a TIP it must submit a business plan that addresses how it will serve the TIP and how it will verify an individual is part of that TIP. Verification may include a state license, payroll statements, or any other documentation indicating that an individual is a member of the specified TIP. Some commenters have asked that retirees and corporate accounts be included in a TIP field of membership. The NCUA Board sees no impediment to such a change and has modified the final rule to allow retirees for all TIPs and corporate accounts for industry TIPs.

The NCUA Board requested comment on whether the final rule should contain a preapproved list of TIPs. A few commenters recommended that the final rule should not contain a preapproved list of TIPs. A few commenters supported an initial listing of NCUA preapproved TIPS, if it did not limit possible TIPs. A few commenters suggested other governmental sources a credit union could review to develop a TIP.

The NCUA Board believes that a list of preapproved TIPs would not prove very useful to most credit unions. Instead, the NCUA Board prefers that the agency approve TIPs, on a case-by-case basis, to ensure consistency among the reasons, address operational issues and to ensure the legal underpinnings of the policy are met. The NCUA Board encourages credit unions to review the U.S. Bureau of Labor Statistics' Standard Occupational Classification System (SOCS) and the U.S. Census Bureau's North American Industrial Classification System (NAICS) for guidance in developing a TIP. Although the information contained in the SOCS and NAICS is neither controlling nor binding on NCUA, the systems do contain some useful information for credit unions considering converting to a TIP occupational common bond.

Finally, the NCUA Board is clarifying that if, for safety and soundness reasons, a TIP credit union needs to convert back to its original field of membership, it can obtain the field of membership it had before the conversion. Such a conversion would need to be approved by the regional director. After the conversion, a credit union could continue to serve members of record of the TIP.

5. Economic Advisability and the Process for Select Group Expansions of Less than 3,000

Economic advisability is critically important both in the chartering process and in the addition of select groups to a multiple common bond credit union. NCUA's responsibility is to ensure that a new credit union has a reasonable likelihood of succeeding in today's financial marketplace.

Based on the historical experience since the promulgation of IRPS 99–1, plus other chartering data since 1990, the NCUA Board proposed to raise the expedited processing threshold for adding groups from 500 to less than 3,000. In conjunction with this proposal, the NCUA Board also proposed raising the number of members in a group requiring an overlap analysis from 500 to less than 3,000.

One hundred and thirty-three commenters supported the proposed change. One commenter requested no economic ability analysis or overlap analysis be conducted on groups of 3,000 or more either. A few commenters opposed the change and some of these commenters stated they believed that it would hurt small credit unions.

The NCUA Board is adopting the proposed amendment in the final rule. NCUA will continue to perform an economic advisability analysis and overlap analysis for a group of 3,000 or more. NCUA's experience supports the view that a primary potential membership of less than 3,000 will rarely be economically advisable. In fact, 3,000 is the same threshold at or above which Congress requires the agency to look at the group more closely to determine if it can form its own credit union. The final rule merely makes consistent the application of the statutory 3,000 figure as the break point for mandatory analysis of a group that chooses to affiliate with an existing credit union, rather than charter its own credit union. In some circumstances, a smaller number of potential members may be economically advisable, and such groups, if they express the desire to form a separate credit union, will be given that opportunity. However, as always, the group's desire and initiative to form a credit union are critical factors in evaluating economic advisability.

6. Community Charters

Over the years, the NCUA Board has approved numerous conversions of credit unions to community charters. The NCUA Board proposed three different definitions of what constitutes a local community. These definitions were based on the Board's experience and authority under the Act to determine what constitutes a local community for purposes of a federal community charter.

First, the NCUA Board proposed that any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community. The NCUA Board stated that this is an irrebuttable presumption, regardless of population size, and that no documentation demonstrating that the political jurisdiction is a community would be required.

Second, the NCUA Board proposed that any area that is a Metropolitan Statistical Area (MSA), or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed one million, may meet the definition of a local community. The NCUA Board stated that, if the proposed community meets the MSA criteria and population limits, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

Third, the NCUA Board proposed increasing the presumption of a local community from 200,000 residents to 500,000 residents for multiple political jurisdictions that are not part of a single MSA. The NCUA Board stated that, if the credit union meets this criterion, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

One hundred and eighty-one commenters supported the new definitions of a local community and the changes to the community section. Seven commenters requested a more expansive definition of a local community. Four commenters did not support the proposal and believe the definition of local community will hurt small credit unions.

The NCUA Board is adopting the proposed definition of a local community in the final rule. As stated in the proposal, this definition of local community comports with the general experience of this Board in determining what constitutes a local community charter.

The NCUA Board clarified in the proposed rule that a community charter can apply to convert to serve a different community area. A couple of commenters specifically approved of the proposal. The NCUA Board is adopting this provision in the final rule without change.

The NCUA Board clarified in the proposal that persons or organizations that regularly do business in a community can be included in a community credit union's charter. A couple of commenters specifically approved of this clarification. The NCUA Board is adopting this clarification in the final rule and is

providing an example in the final rule to demonstrate that a community charter can serve individuals and organizations that regularly conduct business in the community.

Twenty-two commenters requested that, if a credit union converts to a community charter, all groups outside the community boundary should continue to be served by the community credit union. The NCUA Board believes that such an interpretation is not permitted under CUMAA. However, as stated in this rule, and previous NCUA rules, groups obtained through an emergency merger or emergency purchase and assumption can continue to be served by the new community credit union.

One commenter believes credit unions should be able to serve multiple, noncontiguous communities, and another commenter believes NCUA should not restrict a credit union to a single charter type, but should permit credit unions to be hybrids of different charter types. Unfortunately, the Act does not specifically permit hybrid charters and does not generally permit a credit union to serve multiple noncontiguous communities. However, there are some exceptions to this rule, involving emergency mergers, underserved areas and the grandfathering of certain fields of memberships.

7. Common Bond Conversions

In the current Chartering Manual, the sections on federal charter conversions for occupational common bond credit unions, associational common bond credit unions, and multiple group common bond credit unions all contain a general three-year prohibition on converting to another type of charter, except to a community charter. This prohibition was originally established for operational and administrative reasons. The NCUA Board proposed the elimination of this prohibition since it unduly limits the flexibility needed for federal credit unions to serve their members and make well-reasoned business decisions.

Fifty-nine commenters specifically supported the proposal. One commenter specifically opposed the change. The NCUA Board has not been provided any compelling rationale to retain this prohibition so it is deleting this requirement and adopting the proposal in the final rule.

8. Charter Conversions

The NCUA Board clarified in the proposed rule that, if a State charter wants to convert to Federal charter and had previously obtained a group or area through a procedure similar to NCUA's emergency merger provision, it can retain that field of membership when it converts to a Federal charter. Sixty-four commenters specifically supported this clarification. Two commenters specifically opposed it because of possible abuse.

The NCUA Board is adopting in the final rule the clarification that a State charter that converts to a Federal charter may retain any groups obtained through a State's emergency field of membership provision. Any subsequent expansions or amendments to the field of membership of the Federal charter must comply with Federal field of membership policies. The NCUA Board does not believe that adoption of this clarification will lead to any abuse because most State emergency provisions are not broader than those for Federal charters.

The NCUA Board requested comment on whether there was a compelling rationale to permit any type of State charters to retain their State fields of membership when converting to Federal charters. The NCUA Board also requested comment on other ways to streamline the procedure for converting from a State charter to Federal charter. Several commenters support streamlining the conversion process. Nine commenters requested that State charters converting to Federal charters should be able to retain all groups in their current fields of membership. Although some of these commenters provided good business reasons for adopting such a policy, no commenter provided a compelling justification for such a policy change. The NCUA Board will continue to review this issue in the future to determine if a change in policy is appropriate.

9. The Appeal Process

The NCUA Board proposed a change to the appeal process. The NCUA Board clarified that, if a credit union seeks a second reconsideration of an application, and it is still not approved by the region, it will be treated as an appeal and sent to the NCUA Board for a decision. Furthermore, Chapter Three of the Chartering Manual on underserved areas does not have a separate appeals section, so the NCUA Board proposed adding an appeal provision to this section.

Fifty commenters specifically supported the changes to the appeal process and only one commenter opposed it. The NCUA Board is adopting the proposed changes to the appeals process, with minor modifications, including the addition of an appeal process for underserved areas.

10. Miscellaneous Clarifications

The NCUA Board proposed three other amendments to conform to other proposals made by the NCUA Board or to clarify existing policy. First, the NCUA Board proposed a change to chapter 1, section XII to permit foreign branching by Federal credit unions. Any existing or proposed branches on United States military installations or United States embassies are unaffected by this change.

The few commenters that addressed the issue supported the proposed amendment. The NCUA Board is adopting this proposal in the final rule.

Second, the NCUA Board clarified how corporate accounts can be cited in a credit union's charter by adding them to the list of groups in ''Other Persons Eligible for Credit Union Membership.'' Forty-three commenters supported the clarification and the NCUA Board is adopting this clarification in the final rule.

Third, the NCUA Board clarified that in a spin-off all members of the group to be spun off, regardless of how they voted, will be transferred if the spin-off is approved by the voting membership. Forty-three commenters supported the clarification. The NCUA Board believes that this treatment of members in a spin-off is consistent with CUMAA and is adopting this clarification in the final rule.

A couple of commenters recommended NCUA review its investment area definition; specifically, the definition of empowerment zones or enterprise communities used to add underserved areas. Before a Federal credit union can expand its field of membership to serve an underserved area, the area must, among other things, be classified as an investment area under section 103(16) of the Community Development Banking and Financial Institutions (CDFI) Act of 1994 (the CDFI Act), 12 U.S.C. 4703(16). The CDFI Act permits the U.S. Department of the Treasury's CDFI Fund to further define investment area.

NCUA has reviewed its investment area definition in response to these commenters and also because the CDFI Fund recently issued an interim final rule, revising its program, including its own investment area definition. 68 FR 5704, February 4, 2003 (to be codified at 12 CFR part 1805). The CDFI Fund has deleted the following criteria from its definition:

- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;

• An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent; and

• An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the 5-year period preceding the most recent decennial census of at least 5 percent.

The CDFI Fund also modified its section on empowerment zones and enterprise communities in its investment area definition. The definition now includes an area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986, 26 U.S.C. 1391.

With the release of the 2000 Census data as well as the new definitions of an investment area, the NCUA Board has also updated its definition of an investment area in chapter 3 of the Chartering Manual. The NCUA Board does not expect these revisions to have any measurable impact on bringing credit union service to underserved areas. In general, the NCUA Board acknowledges that the three eliminated criteria were either redundant or not accurate measures of economic distress. The NCUA Board believes that the changes will have no adverse effect on geographic areas qualifying as investment areas. Therefore, the final investment area definition is revised to conform to the CDFI Fund's new definition.

A couple of commenters asked for the agency to abolish the requirement of a sponsor letter from a select group that a multiple common bond credit union wants to add to its field of membership. The NCUA Board believes, at this time, the sponsor letter for multiple group expansions is beneficial for credit unions because it demonstrates the desire of the group. The Board is not deleting the requirement but the NCUA Board will continue to monitor the usefulness of requiring the letter.

Finally, the NCUA Board proposed some technical wording changes to all of the chapters in the Chartering Manual and updated the Appendices. The final rule includes additional changes to the forms in Appendix D to make them easier to understand and use. These changes are not substantive.

B. Comments From Banks and Bank Trade Organizations

Bank and bank trade organization commenters objected to the proposal and argued that Federal credit unions should be subject to taxation like banks. In general, these commenters opposed all 10 categories in the proposal listed above. Specifically, the commenters argued that the NCUA Board's proposal does not adhere to CUMAA, including the definitions of ''local'' and ''common bond,'' and objected to: The proposals to use MSAs to define local communities; defining a service facility as including ATMs; the concept of the TIP occupational common bond; and the change to the standard clause to include corporate and other business sponsors.

The NCUA Board has considered all issues raised by these commenters and has previously addressed the major issues in this preamble since other commenters discussed the same provisions. As to the question of taxation, it is a statutory issue, not a regulatory issue. Most recently Congress addressed this issue in CUMAA at section 2.(4), which states that ''[c]redit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes * * *''.

Finally, as in the past, some of the commenters from banking organizations stated that the proposed regulation does nothing to encourage the formation of separate credit unions to serve groups of fewer than 3,000 persons. The NCUA Board strongly disagrees with this comment. In fact, the NCUA Board's policy is that any group that can meet the economic advisability requirements should form its own credit union. The NCUA Board has simply established criteria that provide guidance based on historical experience relative to those groups that may have the best opportunity to succeed. Every effort will be made to encourage new charters, but operational feasibility and requirements are valid factors and cannot be ignored in the decision making process. Nothing in this rule prevents a group with less than 3,000 from applying to charter its own credit union. In fact, NCUA has put in place an Express Chartering Program to help small but viable groups in chartering a credit union.

C. Internet Expansion Requests

The Field of Membership Taskforce has developed an internet, select group expansion form. This process allows credit unions to submit requests for occupational groups of less than 3,000 online with an expedited approval by NCUA. The Field of Membership Taskforce is in the process of developing a form to allow associational groups of less than 3,000 to be approved by NCUA online. The regional offices can provide credit unions with specific details on how to do an expansion through the internet.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under one million dollars in assets. The final rule will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget control number assigned to § 701.1 is 3133–0015, and to forms included in Appendix D is 3133–0116. NCUA has determined that the final rule will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final

rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 27, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

■ 2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 03–1, Chartering and Field of Membership Policy (IRPS 03–1). Copies may be obtained by contacting NCUA at the addresses found in § 790.2(c) of this chapter.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 03–1) does not appear in the Code of Federal Regulations.

■ 3. IRPS 03–1 is added to read as follows:

Chapter 1—Federal Credit Union Chartering

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the ''subscribers''—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In

general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good ''general character and fitness.'' Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (*e.g.,* employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—*e.g.,* loan and dividend rates;
- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possess an appropriate common bond or the geographical area to be served is a well-defined local

community, neighborhood, or rural district;

- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and
- Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. State-chartered credit unions applying for conversion to a federal charter will use NCUA 4000. (See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed federal credit union must sign this form.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be ''Federal Credit Union.''

The word ''community,'' while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the NCUSIF. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union. A single occupational common bond credit union may also serve a trade, industry, or profession (TIP), such as all teachers.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

Multiple Common Bond: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (*e.g.* city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

XII—Foreign Branching

Federal credit unions are permitted to serve foreign nationals within their fields of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union opens a branch outside the United States, it must submit an application to do so and have prior written approval of the regional director. A federal credit union may establish a service facility on a United States military installation or United States embassy without prior NCUA approval.

Chapter 2—Field of Membership Requirements for Federal Credit Unions

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group having a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are

fully discussed in the following sections of this Chapter, may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is ''to serve the productive and provident credit needs of individuals of modest means.'' Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A.1—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in five ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond;
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, Section III.A.1); or
- Employment in the same Trade, Industry, or Profession (TIP) (see Chapter 2, Section II.A.2).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served may be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation and subsidiaries;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

The corporation or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, ''ABC Corporation.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of single occupational common bonds are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation);
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer); or
- All licensed nurses in Fairfax County, Virginia. (occupational common bond TIP).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor; overly broad TIP);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

While proposed or existing single common bond credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it cannot be defined so broadly as to include groups in fields which are not closely related. For example, the manufacturing industry, energy industry, communications industry, retail industry, or entertainment industry would not qualify as a TIP because each industry lacks the necessary commonality. However, textile workers, realtors, nurses, teachers, police officers, or U.S. military personnel are closely related and each would qualify as a TIP.

The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession. If a credit union wants to serve a physician TIP, it can serve all physicians, but that does not mean it can also serve all clerical staff in the physicians' offices. However, if the TIP is based on the health care industry, then clerical staff would be able to be served by the credit union because they work in the same industry and have the same commonality of interests.

If a credit union wants to include the airline services industry, it can serve airline and airport personnel but not passengers. Clients or customers of the TIP are not eligible for credit union membership (*e.g.*, patients in hospitals).

Any company that is involved in more than one industry cannot be included in an industry TIP (*e.g.*, a company that makes tobacco products, food products, and electronics). However, employees of these companies may be eligible for membership in a variety of trade/profession occupational common bond TIPs.

Since a TIP must be narrowly defined, it cannot include third party vendors

and other suppliers. For example, the steel suppliers to the automobile industry would not be part of the automobile industry TIP.

However, the automobile industry includes manufacturers and their automobile dealerships.

In general, except for credit unions currently serving a national field of membership or operating in multiple states, a geographic limitation is required for a TIP credit union. The geographic limitation will be part of the credit union's charter and generally correspond to its current or planned operational area. More than one federal credit union may serve the same trade, industry, or profession, even if both credit unions are in the same geographic location.

This type of occupational common bond is only available to single common bond credit unions. A TIP cannot be added to a multiple common bond or community field of membership.

To obtain a TIP designation, the proposed or existing credit union must submit a request to the regional director. New charter applicants must follow the documentation requirements in Chapter 1. New charter applicants and existing credit unions must submit a business plan on how the credit union will serve the group with the request to serve the TIP. The business plan also must address how the credit union will verify the TIP. Examples of such verification include state licenses, professional licenses, organizational memberships, pay statements, union membership, or employer certification. The regional director must approve this type of field of membership before a credit union can serve a TIP. Credit unions converting to a TIP can retain members of record but cannot add new members from its previous group or groups, unless it is part of the TIP.

Section II.B on Occupational Common Bond Amendments does not apply to a TIP common bond. Removing or changing a geographical limitation will be processed as a housekeeping amendment. If safety and soundness concerns are present, the regional director may require additional information before the request can be processed.

Section II.H, on Other Persons Eligible for Credit Union Membership, applies to TIP based credit unions except for the corporate account provision which only applies to industry based TIPs. Credit unions with industry based TIPs may include corporations as members because they have the same commonality of interests as all employees in the industry. For example, an airline service TIP (industry) can serve an airline carrier (corporate account); however, a nurses TIP (profession) could not serve a hospital (corporate account) because not everyone working in the hospital shares the same profession.

If a TIP designated credit union wishes to convert to a different TIP or employer-based occupational common bond, or different charter type, it only retains members of record after the conversion. The regional director, for safety and soundness reasons, may approve a TIP designated credit union to convert to its original field of membership.

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a group sharing the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met. The regional director must approve all amendments to an occupational common bond credit union's field of membership.

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

II.C—NCUA'S Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure compliance with NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to

submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

II.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A), or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming

federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single occupational federal credit unions to overlap any other charter without performing an overlap analysis.

II.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership.

If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond charter.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

II.F—Charter Conversion

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

II.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the

request, membership will continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

II.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or school.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

III—Associational Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association's charter, bylaws, and any other equivalent documentation.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, which includes:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups may constitute associational common bonds.

Student groups (*e.g.*, students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

The terminology ''Alumni of Jacksonville State University'' is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Homeowner associations, tenant groups, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a

condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, ''Sprocket Association''—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States. (Too broadly defined); or
- Veterans of U.S. military service. (Group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University. (No formal association);
- Customers of Fleetwood Insurance Company. (Policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia Chamber of Commerce. (Not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama. (Churches are not of the same denomination).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a group that shares the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met. The regional director must approve all amendments to an associational common bond credit union's field of membership.

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding

the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

III.D—Mergers, Purchase and Assumptions, and Spin-offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency

merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single associational federal credit unions to overlap any other charters without performing an overlap analysis.

III.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) The credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's ''paid from'' or ''supervised from'' location is within the service area.

IV.A.2—Sample Multiple Common Bond Field of Membership

An example of a multiple common bond field of membership is:

''The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;
3. Members of the M&L Association in Wilmington, Delaware, who qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997.''

IV.B—Multiple Common Bond Amendments

IV.B.1—General

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

- A single occupational or associational charter to a multiple common bond charter;
- A multiple common bond to a single occupational or associational charter;
- A multiple common bond to a community charter; or
- A community to a multiple common bond charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group no longer exists.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The regional director must approve all

amendments to a multiple common bond credit union's field of membership.

NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is ''adequately capitalized.'' NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level;
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

IV.B.3—Documentation Requirements

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015 or NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ (for groups less than 3,000 potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the applicant federal credit union's field of membership;
  - The number of persons currently included within the group to be added and their locations; and
  - The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015 (for groups of 3,000 or more primary potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the federal credit union's field of membership;
  - Whether the group presently has other credit union service available;
  - The number of persons currently included within the group to be added and their locations;
  - The group's proximity to credit union's nearest service facility, and
  - Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. A credit union need not address every item on the list, simply those issues that are relevant to its particular request:

Member location—whether the membership is widely dispersed or concentrated in a central location.

Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

Market competition—the availability of other financial services.

Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

Sponsor subsidies—the availability of operating subsidies.

The desire of the sponsor—the extent of the sponsor's interest in supporting a credit union charter.

Employee interest—the extent of the employees' interest in obtaining a credit union charter.

Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore, the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

IV.C—NCUA'S Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

IV.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

IV.D.1—Voluntary Mergers

a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or More Select Groups in the Merging Credit Union's Field of Membership has 3,000 or More Primary Potential Members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form a separate credit union analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a Single Common Bond Credit Union Into a Multiple Common Bond Credit Union.

A financially healthy single common bond credit union with a primary potential membership of 3,000 or more cannot merge into a multiple common bond credit union, absent supervisory reasons, unless the continuing credit union already serves the same group.

d. Merger Approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Supervisory Mergers

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules, the 3,000 numerical limitation, or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and

• The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

• Abandonment by management;
• Loss of sponsor;
• Serious and persistent record keeping problems; or
• Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements. Under this authority, any single occupational or associational common bond, multiple common bond, or community charter may merger into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.4—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.5—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

• Why the spin-off is being requested;
• What part of the field of membership is to be spun off;
• Which assets, liabilities, shares, and capital are to be transferred;
• The financial impact the spin-off will have on the affected credit unions;
• The ability of the acquiring credit union to effectively serve the new members;
• The proposed spin-off date; and
• Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an expansion request if the group has 3,000 or more primary potential members. If cases arise where the assurance given to a regional director concerning the unavailability of credit union service is inaccurate, the misinformation may be grounds for removal of the group from the federal credit union's charter.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will approve an overlap if the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

• The view of the overlapped credit union(s);
• Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
• Whether there is limited participation by members or employees

of the group in the original credit union after the expiration of a reasonable period of time;

- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This is accomplished through a housekeeping amendment.

Credit unions must submit to NCUA documentation explaining the restructuring and provide information regarding the new organizational structure.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

IV. F—Charter Conversion

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter, which do not qualify in the new charter, cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

IV. G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;
- The group initiates action to be removed from the field of membership; or
- The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

IV. H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the

immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

V—Community Charter Requirements

V.A.1—General

Community charters must be based on a single, geographically well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The area is a ''well-defined local, community, neighborhood, or rural district;'' and
- Individuals must have common interests and/or interact.

V.A.2—Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.

The well-defined local community, neighborhood, or rural district requirement *is met* if:

- The area to be served is in a recognized single political jurisdiction, *i.e.,* a city, county, or their political equivalent, or any contiguous portion thereof.

The well-defined local community, neighborhood, or rural district requirement *may be met* if:

- The area to be served is in multiple contiguous political jurisdictions, *i.e.,* a city, county, or their political equivalent, or any contiguous portion thereof and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the proposed area meets either the multiple political jurisdiction or MSA criteria, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

If NCUA does not find sufficient evidence of community interaction and/or common interests or if the area to be served does not meet the MSA or multiple political jurisdiction requirements of the preceding paragraph, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction and/or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- A local map designating the area to be served and locations of current and proposed service facilities and a regional or state map with the proposed community outlined; or
- Other documentation that demonstrates that the area is a community where individuals have common interests and/or interact.

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application since IRPS 99–1, as amended. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are no longer accurate.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the

unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

V.A.3—Special Documentation Requirements for a Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter. Therefore, the credit union is required to notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

The documentation requirements set forth in Section V.A.2 of this Chapter must be met before a community charter can be approved. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—*e.g.,* member, share, loan, and asset growth;
- Marketing plan addressing how the community will be served;
- Financial services to be provided to members;
- A local map showing current and proposed service facilities; and
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and capable of providing services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter. The boundaries can usually be defined using political borders, streets, rivers, railroad tracks, etc.

A community that is a recognized legal entity, may be stated in the field of membership—for example, ''Gus Township, Texas'' or ''Kristi County, Virginia.''

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.,* live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York; or
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York.

Some examples of insufficiently defined community field of membership definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (using a radius does not establish a well-defined area);
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests and/or interact. The credit union must follow the requirements of Section V.A.3 of this chapter.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of

membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state-chartered credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent recordkeeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

V.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they

otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

V.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit community credit unions to overlap any other charters without performing an overlap analysis.

V.E.2—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group or community otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

V.F—Charter Conversions

A community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

A community credit union may convert to serve a new geographical area provided the field of membership requirements of V.A.3 of this chapter are met. Members of record of the original community can continue to be served.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Members of the immediate family or household; and
- Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

II—Low-Income Credit Union

II.A—Defined

A credit union serving predominantly low-income members may be designated

as a low-income credit union. Section 701.34 of NCUA's Rules and Regulations defines the term ''low-income members'' as those members:

• Who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or

• Whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau.

The term ''low-income members'' also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members. A low-income designation for a new credit union charter may be based on a majority of the potential membership.

II.B—Special Programs

A credit union with a low-income designation has greater flexibility in accepting nonmember deposits insured by the NCUSIF, are exempt from the aggregate loan limit on business loans, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income designated community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or attend school in the community, a low-income community federal credit union may also serve persons who participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income designated community and an associational-based low-income federal credit union are as follows:

• Persons who live in [the target area]; persons who work, worship, attend school, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.

• Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

III.A—General

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition of underserved areas in the Federal Credit Union Act. Adding an underserved area will not change the charter type of a federal credit union. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if:

• The area to be served is in a recognized single political jurisdiction, *i.e.,* a city, county, or their political equivalent, or any contiguous portion thereof;

• The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or their political equivalent, or any contiguous portion thereof and if the population of the requested well-defined area does not exceed 500,000; or

• The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the area to be served does not meet the MSA or multiple political jurisdiction requirements outlined above, the application must include documentation to support that it is a

well-defined local community, neighborhood, or rural district.

For an underserved area, an investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- An area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or the credit union's Internet web site.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change. Therefore, the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the community are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

IV—Appeal Procedures for Underserved Areas

IV.A—NCUA Approval

If the requested underserved area is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

IV.B—NCUA Disapproval

When NCUA disapproves any application to add an underserved area, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

IV.C—Appeal of Regional Director Decision

If the regional director denies an underserved area request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

Chapter 4—Chapter Conversions

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured, it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in Appendix D.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion and file proof of compliance with NCUA;

• File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;

• Comply with the requirements of the Federal Credit Union Act, *e.g.*, chartering and reserve requirements; and

• Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including an on-site examination by NCUA where appropriate. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. However, if the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Subsequent changes must conform to NCUA chartering policy in effect at that time.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V of this manual. If the state-chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

The converting credit union, regardless of charter type, may continue to serve members of record. The converting credit union may retain in its field of membership any group or community added pursuant to state emergency provisions.

II.B—Submission of Conversion Proposal to NCUA

The following documents must be submitted with the conversion proposal:

• Conversion of State Charter to Federal Charter (NCUA 4000);

• Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section should be completed and, where applicable, signed by the credit union officials.

• Report of Officials and Agreement to Serve (NCUA 4012);

• The Application to Convert From State Credit Union to Federal Credit Union (NCUA 4401);

• The Application and Agreements for Insurance of Accounts (NCUA 9500);

• Certification of Resolution (NCUA 9501);

• Written evidence regarding whether the state regulator is in agreement with the conversion proposal; and

• Business plan, as appropriate, including the most current financial report and delinquent loan schedule.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Section V.A.2 of this manual.

II.C—NCUA Consideration of Application To Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert.

II.C.2—On-Site Review

NCUA may conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.C.5—NCUA Disapproval

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

• Specific reasons for the action;

• Options to consider, if appropriate, for gaining approval; and

• Appeal procedures.

II.C.6—Appeal of Regional Director Decision

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

• Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;

• Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;

• Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and

• Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. Refer to Section II.C.6 of this chapter.

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''state credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state-chartered name can be used by the members until depleted.

II.E.5—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

• Report of Officials (NCUA 4501); and

• Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

• Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;

• Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and

• Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

• A current financial report;

• A current delinquent loan schedule;

• An explanation and appropriate documents relative to any changes in insurance of member accounts;

• A resolution of the board of directors;

• A proposed Notice of Special Meeting of the Members (NCUA 4221);

• A copy of the ballot to be sent to all members (NCUA 4506);

• If the credit union intends to continue with federal share insurance, an application for insurance of accounts (NCUA 9600);

• Evidence that the state regulator is in agreement with the conversion proposal; and

• A statement of reasons supporting the request to convert.

III.D—Approval of Proposal To Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in

compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.D.5—NCUA Disapproval

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.D.6—Appeal of Regional Director Decision

If the regional director denies a conversion to a state charter, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:
  - Specify the purpose, time and place of the meeting;
  - Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
  - Specify the costs of the conversion, *i.e.*, changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;
  - Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
  - Be accompanied by a Federal to State Conversion—Ballot for Conversion Proposal (NCUA 4506); and
  - State in bold face type that the issue will be decided by a majority of members who vote.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state-chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.

• Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.

• If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.

• There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.

• The credit union shall neither use the words ''Federal Credit Union'' in its name nor represent itself in any manner as being a federal credit union.

• Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''federal credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the members until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.

• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

BILLING CODE 7535–01–P

APPENDIX A

GLOSSARY

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

Affinity - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, related companies or in a trade, industry, or profession (TIP); and associational - membership in the same association.

Community credit union - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

Federal share insurance - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household - Persons living in the same residence maintaining a single economic unit.

Housekeeping Amendment - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

Immediate family member - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Letter of Understanding and Agreement - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Mentor - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Metropolitan Statistical Area (MSA) - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties

containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

Merger - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond - Employment by the same entity or related entities or a Trade, Industry, or Profession.

Once a member, always a member - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Organizations of such persons - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

Overlap - The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members - Members or employees who belong to an associational or occupational group.

Purchase and assumption - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website. A service facility does not include an

ATM or interest in a shared branch network for purposes of serving an underserved area.

Single associational common bond credit union - A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union - A credit union whose field of membership consists of employees of the same entity or related entities or part of a Trade, Industry, or Profession (TIP).

Spin-off - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Trade, Industry, or Profession (TIP) - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

Underserved community - A local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

APPENDIX B

LETTER OF UNDERSTANDING AND AGREEMENT

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit

union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ of _____ _____.
(day) (month) (year)

NATIONAL CREDIT UNION ADMINISTRATION BOARD
ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____Federal Credit Union

By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

APPENDIX C

NCUA OFFICES

CENTRAL OFFICE

1775 Duke Street
Alexandria, VA 22314-3428

Commercial: 703-518-6300

REGION I - Albany

9 Washington Square
Washington Avenue Extension
Albany, NY 12205-5512

Commercial: 518-862-7400
FAX: 518-862-7420

Connecticut
Massachusetts
New York
Vermont
Maine
New Hampshire
Rhode Island

REGION II - Capital

1775 Duke Street, Suite 4206
Alexandria, VA 22314-3437

Commercial: 703-519-4600
FAX: 703-519-4620

Delaware
Maryland
Pennsylvania
District of Columbia
New Jersey
Virginia

REGION III - Atlanta

7000 Central Parkway, Suite 1600
Atlanta, GA 30328-4598

Commercial: 678-443-3000
FAX: 678-443-3020

Alabama
Florida
Kentucky
Mississippi
Puerto Rico
Tennessee
Arkansas
Georgia
Louisiana
North Carolina
South Carolina
Virgin Islands

REGION IV - Chicago

4225 Naperville Road, Suite 125
Lisle, IL 60532-3658

Commercial: 630-955-4100
FAX: 630-955-4120

Illinois
Michigan
Ohio
West Virginia
Indiana
Missouri
Wisconsin

REGION V - AUSTIN

4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759-8490

Commercial:	512-342-5600
FAX:	512-342-5620

Arizona	Colorado
Iowa	Kansas
Minnesota	Nebraska
New Mexico	North Dakota
Oklahoma	South Dakota
Texas	

REGION VI - Pacific

2300 Clayton Road, Suite 1350
Concord, CA 94520-2407

Commercial:	925-363-6200
FAX:	925-363-6220

Alaska	California
Guam	Hawaii
Idaho	Montana
Nevada	Oregon
Utah	Washington
Wyoming	

APPENDIX D

NCUA FORMS

Form Number	Form Title
NCUA 4000	Conversion of State Charter to a Federal Charter – Federal Credit Union Investigation Report
NCUA 4001	Federal Credit Union Investigation Report
NCUA 4008	Organization Certificate
NCUA 4009	Approval of Organization Certificate and Certification of Insurance
NCUA 4012	Report of Official and Agreement to Serve
NCUA 4015	Application for Field of Membership Amendment
NCUA 4015-EZ	Application for Field of Membership Amendment (use for all single common bond expansions and multiple common bond expansions of less than 3,000)
NCUA 4221	Notice of Meeting of Members to Convert from a Federal to State Chartered Credit Union
NCUA 4401	Application to Convert from a State to a Federal Credit Union
NCUA 4505	Affidavit - Proof of Results of Membership Vote - Proposed Conversion From Federal Credit Union to State Credit Union
NCUA 4506	Federal to State Conversion - Ballot for Conversion Proposal
NCUA 9500	Application and Agreements for Insurance of Accounts
NCUA 9501	Certification of Resolutions
NCUA 9600	Information to be Provided in Support of the Application of a State Chartered Credit Union for Insurance of Accounts

CONVERSION OF STATE CHARTER TO FEDERAL CHARTER

FEDERAL CREDIT UNION INVESTIGATION REPORT

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4 and in the instructions for this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name: _____ Federal Credit Union
Second Choice of Name: _____ Federal Credit Union

2. Contact Person_____
Bus. Tel. No./Area Code: _____Res. Tel. No./Area Code_____

3. The credit union will maintain its office at:

_____	_____	_____	_____
(City)	(County)	(State)	(Zip)

4. Permanent mailing address of credit union:

_____
_____
_____

5. Define proposed field of membership (Attach a copy of current state charter field of membership):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

6. The board will have (an odd number 5 to 15) _____ members; the credit committee (an odd number, 3 to 7) _____ members; the supervisory committee (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

7. Type or print the list of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**
***Name*:**	***Address*:**	
***Occupation*:**		***Years of Membership*:**

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____ , Organizer
Organizer's Address: _____
_____
_____

FORM 4000 INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Application to Convert, NCUA 4401 – one original;

2. Written evidence regarding whether the state regulator is in agreement with the conversion proposal;

3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;

4. Certificate of Resolution, NCUA 9501 - one original;

5. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

6. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

7. Most current financial report and delinquent loan schedule; and

8. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

This form must be filled in completely and submitted with the other completed forms listed in the instructions to this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name: _____ Federal Credit Union
   Second choice: _____ Federal Credit Union

2. Contact Person: _____
   Business Tel.: _____
   Residence Tel.: _____
   Address: _____
   _____
   _____

3. The credit union will maintain its offices at:

   _____
   (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union:

   _____
   _____
   _____

4. Define proposed field of membership: _____
_____
_____
_____
_____
_____
_____
_____
_____

5. The board will have (an odd number, 5 to 15) _____members; the credit committee will have (an odd number, 3 to 7) _____members; the supervisory committee will have (3 to 5) _____members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. **Potential membership: _____**

   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. **Potential interest (survey results).**

   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.

   Number of people surveyed: _____
   Number of people responding to survey: _____
   Number of people pledging an initial deposit: _____
   Total dollars pledged: $_____
   Number pledging systematic savings: _____
   Total dollars pledged (per month): $_____

3. **Number of persons attending the charter-organization meeting: _____**

4. **Attach a business plan containing, at a minimum, the following elements:**

   - **mission statement;**
   - **analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;**
   - **evidence of member support;**
   - **goals for shares, loans, and for number of members;**
   - **financial services needed/desired;**
   - **financial services to be provided to members of all segments within the field of membership;**
   - **how/when services are to be implemented;**
   - **organizational/management plan addressing qualification and planned training of officials/employees;**

- **continuity plan for directors, committee members, and management staff;**
- **operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;**
- **type of record keeping and data processing system;**
- **detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions - e.g., loan and dividend rates;**
- **plans for operating independently;**
- **written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);**
- **source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and**
- **evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.**

5. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives?

_____
_____
_____
_____

6. What provisions have been made to overcome potential difficulties?

_____
_____
_____
_____

Dates of planned contacts by organizer to determine progress and to assist the group:

First Contact Date: _____
Second Contact Date: _____
Third Contact Date: _____

SPECIFIC INFORMATION - OCCUPATIONAL (same company) CHARTER APPLICANTS

1. How long has the sponsor company been in existence? _____

2. What was the highest number of employees during the past three years? _____ Lowest number during the past three years? _____ If a large variance, please explain. _____

3. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain. _____

4. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

5. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain. _____

6. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members.

7. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

_____

_____

_____

_____

8. Are there other employees of the company who are not being included in the proposed field of membership? _____ **If so, give the number and location of the other employees and explain why they are not included in the proposed credit union's field of membership.** _____

_____

_____

_____

_____

SPECIFIC INFORMATION - OCCUPATIONAL (trade, industry or profession) CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

_____
_____
_____
_____
_____
_____
_____
_____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

1. State the purpose and goals of the organization sponsoring this charter.

_____
_____
_____
_____
_____
_____
_____
_____

2. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

_____
_____
_____
_____
_____
_____
_____
_____

3. In what year was the organization established? _____ **Is it incorporated?** _____
Where is the headquarters located? _____

4. Give statistics as to trends in membership during the last five years. _____

_____
_____
_____
_____

5. What is the frequency of membership meetings? _____
Average attendance: _____ **Dues required: $**_____

6. State the geographic territory where members reside. _____

_____
_____
_____
_____

7. Submit a copy of the current bylaws of the association, the constitution, articles of incorporation, or equivalent documentation and recent financial statements, i.e. balance sheet, and income and expense statement, with this application.

8. If the bylaws, constitution, articles of incorporation, or equivalent documentation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members.

_____

_____

_____

_____

_____

SPECIFIC INFORMATION – MULTIPLE COMMON BOND CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

_____

_____

_____

_____

_____

_____

_____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

1. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. Please refer to Chapter 2, Section V of the *"Chartering and Field of Membership Manual"* when answering this question.

2. Provide a map which clearly outlines the credit union's proposed community boundaries and identify proposed service facilities.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the Organization Certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

2. Are all of the subscribers within the field of membership? _____ **Do they appear to be representative of the group described in the definition of the field of membership?** _____ **If not, explain.** _____
_____
_____
_____
_____

3. Does your investigation indicate that the subscribers are persons of good character? _____ **If not, explain.** _____
_____
_____
_____
_____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____ If not, explain. _____

_____
_____
_____
_____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____ If so, explain. _____

_____
_____
_____
_____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served?_____

_____
_____
_____
_____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature: _____, Organizer
Organizer's Address: _____
_____
_____

Telephone No.: _____ Date: _____

FORM 4001 INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on the required business plan elements and other information needed to make a decision on the economic advisability of chartering the proposed credit union.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

2. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

3. Business Plan - refer to Part B, question 4 of this form and Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan;

4. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original; and

5. Certification of Resolutions, NCUA 9501 - one original.

NATIONAL CREDIT UNION ADMINISTRATION

_____

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
PAGE 1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:_____

_____

_____

_____

_____

_____

_____

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120(b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS THEREOF we[1] have here unto subscribed our names this

_____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to

administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month) (year)

Signed _____

Title_____
(Notary public or other competent officer)

1 At least seven signers none of whom should administer the oath.

NCUA 4008
PAGE 4

APPROVAL OF ORGANIZATION CERTIFICATE
AND
CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. Seq.), the foregoing organization certificate and insurance of member accounts of _____ Federal Credit Union are approved this

_____ _____ _____
(day) (month) (year)

_____
CHAIRPERSON
NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION

Proposed _____ Federal Credit Union

Title of Prospective Position:_____

Name:_____
Mr./Ms./Mrs. Last, First, Middle

Maiden Name (If Different From Above): _____

Address (Res.): _____
Street, City, State, Zip Code

Telephone Number: (___)_____

Place of Birth: _____Date of Birth: _____
City/State/Country

Employer: _____

Social Security Number (Optional): _____

Type of Business: _____

Number of years with present employer: _____ Your position title: _____

Education background (enter highest grade completed)
High School: _____ College: _____ Major Field of Study: _____

Other training or experience:

_____
_____
_____
_____

Are you willing to accept the position of trust for which you have been selected and to remain in office until a qualified successor is found? ___ YES ___ NO

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties?
___ YES ___ NO

Estimated number of hours per month you will be able to volunteer:_____

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON THE FOLLOWING PAGE:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ___ YES ___ NO

To facilitate the process of obtaining a credit and background check, please provide the following:

1. **Any other names which you have used: _____and,**
2. **Previous address, (if your address changed over the past 2 years):**

_____
_____
_____

3. **Name of Spouse: _____**

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice that follows.

_____

Date **Signature** **Witness**

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on the previous page was YES:

CRIMINAL OFFENSE:

Nature of offense: _____

Date of occurrence: _____ **Date of conviction:** _____

Sentence conferred: _____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, Section 205(d), requires that, except with the written consent of the NCUA Board, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. To assist the NCUA Board in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the NCUA Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the NCUA Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage: ___ YES ___ NO

AUTHORIZATION TO OBTAIN A CREDIT REPORT

The National Credit Union Administration (NCUA) may evaluate the competence, experience, character, and integrity of any individual who is to serve as an official, employee, or committee member of a federally insured credit union, in accordance with §1790a of the Federal Credit Union Act and Chapter 1, §V.B.4 of the NCUA Chartering and Field of Membership Manual.

NCUA may disapprove any individual whose employment it believes will not be in the best interest of the credit union or of the public. To assist in the evaluation process, NCUA may obtain and review an individual's credit report.

Your signature on this document authorizes NCUA to obtain a copy of your credit report.

_____

Last **First** **Middle**

Social Security Number: _____

Date of Birth: _____

_____

Signature **Date**

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015

USE FOR MULTIPLE COMMON BOND EXPANSION FOR GROUPS OF 3,000 OR MORE PERSONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union: _____ Telephone Number: _____ Charter Number: _____

2. Name and address of group: _____ Telephone Number: _____

If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual,* Chapter 2, Section IV.A.2.

4. How many primary potential members (excluding immediate family and household members) are in the group:

5. (a) What is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

   (b) What is the address of this service facility:

[1] **A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed.**

(c) Describe the service area[2] primarily served by the above service facility:

_____
_____
_____
_____

6. Is the group in the field of membership of <u>any</u> other credit union? Yes___ No___

If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____
_____
_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____
_____
_____
_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____
_____
_____
_____

[2] **A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.**

7. Attach a letter, or equivalent documentation, from the group requesting credit union service indicating:

   - ☐ that the group wants to be added to the federal credit union's field of membership;
   - ☐ whether the group presently has other credit union service available;
   - ☐ the number of persons currently included within the group to be added and the group's location(s);
   - ☐ the group's proximity to the credit union's nearest service facility; and
   - ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____
_____
_____
_____
_____
_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____	_____	_____
(Typed/Printed Name)	(Signature)	(Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE FOR MULTIPLE COMMON BOND EXPANSIONS OF LESS THAN 3,000 PERSONS AND ALL SINGLE COMMON BOND EXPANSIONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union: _____ _____ _____ Telephone Number: _____ Charter Number: _____

2. Name and address of group: _____ _____ _____ Telephone Number: _____

If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.

3. Provide the proposed field of membership wording: _____ _____ _____

4. **Multiple Common Bond Expansions Only:** Attach a letter, or equivalent documentation, from the group requesting credit union service indicating:

☐ that the group wants to be added to the federal credit union's field of membership;
☐ the number of persons to be added and the group's location(s); and
☐ the group's distance to the credit union's nearest service facility.

5. **Single Common Bond Expansions Only:** How the group shares the occupational or associational common bond _____
How many primary potential members (excluding immediate family and household members) are in the group: ____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name and Title) (Signature) (Date)

NOTICE OF MEETING OF MEMBERS TO CONVERT FROM A FEDERAL TO A STATE CHARTERED CREDIT UNION

_____ FEDERAL CREDIT UNION

_____ _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union has been called and will be held at_____ _____ on _____, at _____ o'clock, __.M. for the purpose of considering and voting upon the following resolution:

> **"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.**
>
> **RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."**

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons:

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union:

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc):

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, and return it to the following address by no later than the date and the time announced for the meeting of the members:

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE: _____
(CHAIRPERSON)

_____

TITLE: _____
(BOARD SECRETARY)

Issued _____ **(Date)**

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____ by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership. Provide a copy of the credit union's charter, articles of incorporation or bylaws, as amended to date.

   _____
   _____
   _____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully: _____
   _____
   _____
   _____
   _____

3. Standard financial and statistical reports as of _____or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached.

5. The following policies on loans to members are currently in effect in this credit union:

   a. Interest rates on loans: _____

   b. Charges incident to making loans which are passed on to borrowers: _____

   c. Maturity limits: _____

   d. Unsecured loan limit: _____

   e. Secured loan limit: _____

   f. Types of security accepted: _____

   g. Requirements of amortization (Repayment requirements): _____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. **Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)**

8. **Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____**

9. **Describe any real estate owned by credit union, including a list of its current market value: _____**

10. **Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____**

11. **Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act: _____**

12. **Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____**

13. **Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____**

14. **Give specific reasons as to why you desire to convert to a Federal credit union: _____**

We hereby authorize the National Credit Union Administration to examine our books and our records.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____ State of _____ certify: That we are the duly elected Chairperson and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE: _____
(CHAIRPERSON)

_____
TITLE: _____
(CHIEF FINANCIAL OFFICER)

AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE - PROPOSED CONVERSION FROM FEDERAL CREDIT UNION TO STATE CREDIT UNION

We, the undersigned _____ chairperson and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. **That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.**

2. **That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.**

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE: _____
(CHAIRPERSON)

_____
TITLE: _____
(BOARD SECRETARY)

_____
FEDERAL CREDIT UNION

Subscribed before me, an officer competent to administer oaths, at _____
_____, this _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____

(Notary Public or other competent officer)

My Commission Expires _____, _____
(year)

FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

> "RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.
>
> RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

NCUA 4506

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date: _____

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Street Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

6. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

7. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

10. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____	_____
Chairperson	Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting, the board of directors passed the following resolution and recorded it in its minutes:

> **"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.**
>
> **Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."**

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.

_____Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered.
_____

3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____

4. Potential membership (total number of persons who could be served including present members). _____

5. Identify charter type (e.g., single common bond, multiple common bond, community). _____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ No ☐ (Complete a.)

   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____

7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ No ☐ (Complete a.)

   a. Explain fully on an attached schedule. Schedule No. _____

8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.

9. Attach copies of the Balance Sheet and Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year.
Schedule Nos. _____

10. Reserves

Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

_____

11. Delinquent Loans and Charged-off Loans

a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a.
Schedule No. _____

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date	Date	Date	Date
	2 to less than 6 mos.	$	$	$	$
	6 to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals	$	$	$	$
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year	Year	Year	Current Yr. To Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities, (including pending law suits or civil actions)? Yes ☐ No ☐ Complete a.

a. List on an attached schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____

13. Do any asset accounts other than loans to members, investments, and real estate have actual values less than the book values shown on the Balance Sheet?

List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No. _____

14. List below or on an attached schedule, any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. _____. Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? _____

b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$	$
Totals of the trial balance of the individual ledgers	$	$
Differences	$	$

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee?
Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts:
Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years, what is the supervisory committee's target date for completion of the verification program?
Date _____

c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e., 23, 576, 577, 578, 581, 562 CU-1, other) _____

c. Basic amount of coverage $_____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

_____

_____

18. Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? _____

Attach a schedule describing each activity in full. Schedule No. _____

19. Does the board of directors or management know of any adverse economic condition that is affecting or will affect the credit union's present or future operation or that of the sponsor organization?

_____

Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? _____

a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:

a. Complete the following schedule showing the present policies and practices on loans to members.

b. Complete the following schedule of largest loans with the attached instructions pertaining to Item No. 21.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Down Payment (Equity)
1. Credit Union Policies and Practices			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Directors, Officers, or Committee Members			
2. State Credit Union Law; Bylaws			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Bal.	Repayment Period (Mths)	Repayment Status		Appraised Collateral Value*	Collateral Description
			Current	Mths Delq.		

***If there is more than one type of collateral assign value to each type.**

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO'S Organization _____
   (Date of obtaining charter from State)

3. Type of organization (check one):

   a. General Partnership ☐ c. Joint Ownership ☐

   b. Limited Partnership ☐ d. Corporation ☐

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

   a. _____ _____ _____
   Name Charter Number (If FCU) %

   b. _____ _____ _____
   Name Charter Number (If FCU) %

   (Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

   a. _____ _____ _____
   Name Charter Number (If FCU) Amount

   b. _____ _____ _____
   Name Charter Number (If FCU) Amount

   (Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible)._____
_____
_____

7. Comments (include all other pertinent information, if applicable, not previously discussed). _____

_____

_____

_____

8. Attach the latest Financial and Statistical Report of CUSO, if available.

FORM 9600 INSTRUCTIONS

APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with these instructions. Additional schedules may be included if deemed appropriate.

Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.

Existing credit unions must submit current policies and financial statements as noted in the application. All other applicants must submit proposed policies and pro forma financial statements for the first and second year of operation.

When an item specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 10: Reserves: The term "reserves" means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members.

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved

Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured financial institutions.
3. Deposits or accounts in corporate credit unions.

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21b: In selecting the largest loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Re-payment" column.

Complete the Credit Union Service Organization (CUSO) schedule for each investment/loan to a CUSO.

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium

would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund.

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board.

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 713 and 741 of NCUA's regulations.

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Part 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations.

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions.

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act.

7. To comply with the requirement of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto.

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance Fund. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.208 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act and any other applicable federal law.

In support of this application we submit the following schedules:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called and regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed or future officer, committee member or employee is indicted for such an offense.

_____

(Signature) Chairperson, Board of Directors

_____

(Print or type Chairperson's Name)

_____

(Signature) Secretary, Board of Directors

_____

(Print or type Secretary's Name)

APPENDIX E

TRADE ASSOCIATIONS

Credit Union National Association
(CUNA)
P.O. Box 431
Madison, WI 53701
608-231-4000

National Association of Federal Credit
Unions (NAFCU)
3138 N. 10th Street, Suite 300
Arlington, VA 22201
703-522-4770

National Association of State Credit Union
Supervisors (NASCUS)
1655 North Fort Myer Drive
Suite 300
Arlington, VA 22209
703-528-8351

National Federation of Community
Development Credit Unions
(NFCDCU)
120 Wall Street, 10th Floor
New York, NY 10005-3902
212-809-1850

[FR Doc. 03–8721 Filed 4–14–03; 8:45 am]
BILLING CODE 7535–01–C

Federal Register

Tuesday,
April 15, 2003

Part III

Environmental Protection Agency

40 CFR Part 51

Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AH–FRL–7478–3]

RIN 2060–AF01

Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA's *Guideline on Air Quality Models* (''*Guideline*'') addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. In today's action we promulgate several additions and changes to the *Guideline.* We adopt a new dispersion model, CALPUFF, in appendix A of the *Guideline.* CALPUFF becomes the preferred technique for assessing long range transport of pollutants and their impacts on Federal Class I areas. Action on AERMOD and the Emissions and Dispersion Modeling System (EDMS) is deferred. We make various editorial changes to update and reorganize information, and remove obsolete models.

DATES: This rule is effective May 15, 2003. Beginning April 15, 2003 the new model (*i.e.,* CALPUFF) *should be* used for its intended purposes, in accordance with today's document. The period before required implementation of a new model allows user's sufficient time to prepare meteorological data bases and to become familiar with model operation. The new model *may be* used sooner, if desired.

ADDRESSES: All documents relevant to this rule have been placed in Docket No. A–99–05 at the following address: EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5562 (*Tikvart.Joe@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

EPA established an official public docket for this action under Docket ID No. A–99–05. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Our Air Quality Modeling Group maintains an Internet Web site (Support Center for Regulatory Air Models—SCRAM) at: *http://www.epa.gov/scram001.* You may find codes and documentation for models referenced in today's action on the SCRAM Web site. We have also uploaded various support documents (*e.g.,* evaluation reports).

II. Background

The *Guideline* is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The *Guideline* is intended to ensure consistent air quality analyses for activities regulated at 40 CFR 51.112, 51.117, 51.150, 51.160, 51.166, and 52.21. We originally published the *Guideline* in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. On April 21, 2000 we published proposed revisions in the **Federal Register** (65 FR 21506), which is the basis for today's promulgation.

Today's notice promulgates those components of the proposal that were clearly supported by public comments and that were otherwise not controversial, notably:

- Adoption of CALPUFF in appendix A, as proposed, for assessing long range transport of pollutants and their impacts on Federal Class I areas;
- Removal of the Climatological Dispersion Model (CDM), RAM and the Urban Airshed Model (UAM) from appendix A, as proposed;
- Simplification of complex terrain screening techniques in section 5;
- Revision of section 9 to reflect our October 1997 settlement with the Utility Air Regulatory Group regarding specification of emissions from background sources, as proposed;
- Updating information in appendix W and reorganizing its structure; and
- Transfer of appendix B and appendix C to our Web site, as proposed.

The proposal also included (1) adopting AERMOD [1] to replace the Industrial Source Complex (ISC3) model in many assessments that now use it, (2) revising ISC3 by incorporating a new downwash algorithm (PRIME) and renaming the model ISC–PRIME, and (3) updating the Emissions Dispersion Modeling System (EDMS) by incorporating improved emissions and dispersion modules. Regarding AERMOD, nearly every commenter urged EPA to integrate aerodynamic downwash into AERMOD (*i.e.,* not to require two models for some analyses). The only cautions were associated with the need for documentation, evaluation and review of the downwash enhancement to AERMOD. As a result of AERMIC's (the American Meteorological Society (AMS)/ EPA Regulatory Model Improvement Committee) efforts to revise AERMOD, incorporating the PRIME algorithm and making a few other incidental modifications and to respond to the public's cautions, we believe that AERMOD, as modified for downwash, merits another public examination of performance results. Also, since the April 2000 proposal, the Federal Aviation Administration decided to configure EDMS3.1 to incorporate the AERMOD dispersion model, and results of its performance with AERMOD only recently became available. Consequently, AERMOD and EDMS4.0, as well as other conforming changes for the *Guideline,* will be reconsidered in a Supplemental Notice of Proposed Rulemaking (SNPR) in the near future. Note that since AERMOD is not included in today's promulgation, the proposed merger of the *Guideline's* sections 4 and 5 will be deferred to AERMOD's adoption in the future.

III. Public Hearing on the Proposal

We held the 7th Conference on Air Quality Modeling (7th conference) in Washington, DC on June 28–29, 2000. As required by section 320 of the Clean Air Act, these conferences take place

[1] *A*MS/*E*PA Regulatory *MOD*el.

approximately every three years to standardize modeling procedures. This conference served as the forum for receiving public comments on the *Guideline* revisions proposed in April 2000. The 7th conference featured presentations in several key modeling areas that support the revisions promulgated today. A presentation by the Interagency Workgroup on Air Quality Modeling (IWAQM [2]) covered long range transport modeling for point sources. This presentation was followed by a critical review/discussion of the CALPUFF modeling system and available performance evaluations, facilitated jointly by the Air & Waste Management Association's AB–3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution.

We asked the public to address the following questions:

- Has the scientific merit of the models presented been established?
- Are the models' accuracy sufficiently documented?
- Are the proposed regulatory uses of individual models for specific applications appropriate and reasonable?
- Do significant implementation issues remain or is additional guidance needed?
- Are there serious resource constraints imposed by modeling systems presented?
- What additional analyses or information are needed?

We placed a transcript of the 7th conference proceedings and a copy of all written comments, which embody answers to the above questions, in Docket No. AQM–95–01.

IV. Discussion of Public Comments and Issues

All comments submitted to Docket No. A–99–05 are filed in Category IV–D. We summarized these comments, developed detailed responses, and drew conclusions on appropriate actions for today's action in the summary of public comments and EPA responses.[3] In this document, we considered and discussed all significant comments. Whenever the comments revealed any new information or suggested any alternative solutions, we considered such in our final action.

The remainder of this preamble section provides an overview of the primary issues encountered by the Agency during the public comment period and summarizes our response-to-comments.[3] This overview also serves to explain the changes to the *Guideline* in today's action, and the main technical and policy concerns addressed by the Agency. Guidance and editorial changes associated with the resolution of these issues are adopted in the appropriate sections of the *Guideline.* While modeling by its nature involves approximation based on scientific methodology, and entails utilization of advanced technology as it evolves, we believe these changes respond to recent advances in the area so that the *Guideline* continues to reflect the best and most proven of the publicly available models and analytical techniques, as well as to reflect reasonable policy choices.

CALPUFF

CALPUFF is a Lagrangian dispersion model that simulates pollutant releases as a continuous series of *puffs*. Preceding our proposal to adopt CALPUFF in the *Guideline*, IWAQM carefully studied the potential regulatory application of CALPUFF in its Phase 1 report [4] and in its Phase 2 report.[5]

In our April 2000 **Federal Register** notice, we proposed adoption of the CALPUFF modeling system, developed by Earth Tech, Inc., for refined use in modeling long range transport and dispersion to characterize reasonably attributable impacts from one or a few sources for PSD Class I impacts. We also proposed use of CALPUFF for those applications involving complex wind regimes, with case-by-case justification. We sought comments on the use of CALPUFF for these applications, as well as on related uses of meteorological information, *e.g.*, on use of prognostic mesoscale meteorological models and the length of record for meteorological data.

Scientific merits and accuracy. In public comments there was a general consensus that the technical basis of the CALPUFF modeling system has merit and provides substantial capabilities to not only address long range transport, but to address transport and dispersion effects in some complex wind situations.

Commenters generally agreed that the CALPUFF modeling system has adequate accuracy for use in the 50–200km range, with some studies showing that acceptable results can be achieved at least out to 200 to 300km. Since the 7th Modeling Conference, enhancements were made to CALPUFF that allow puffs to be split both horizontally (to address wind direction shear) and vertically (to address spatial variation in meteorological conditions). These enhancements likely will extend the system's ability to treat transport and dispersion beyond 300km.

With respect to accuracy for complex wind situations, we believe that the commenters agreed with our proposal to promote use of CALPUFF for complex winds with prior approval by the reviewing authority. CALPUFF has been demonstrated to perform as well as, or better than, other short-range plume dispersion models for a few cases involving complex winds, several with wind fields that are dominated by terrain effects. Some suggested a need for more testing of CALPUFF, prior to accepting its results in all cases involving complex wind situations. We intend to post on our Web site citations to investigations for any cases involving complex winds as they become available, and to build a knowledge base from which determinations can be made on the use of CALPUFF for various complex wind situations. This will support consideration of new field study comparisons as they become available. For the reasons stated above, it is apparent that CALPUFF contains the scientific basis for more appropriately addressing long range transport and dispersion effects in complex wind situations than do standard plume models.

We conclude that, although the scientific advancements will continue to emerge, CALPUFF in its current configuration is suitable for regulatory use for long range transport, and on a case-by-case basis for complex wind situations. We will require approval to be obtained prior to accepting CALPUFF for complex wind situations, as this will ensure that a *protocol* is agreed to between the parties involved, and that all are willing to accept the results as binding. As experience is gained in using CALPUFF for complex wind

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound air quality models for regulatory assessments of long range transport of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

[3] Summary of Public Comments and EPA Responses 7th Conference on Air Quality Modeling, Washington, D.C., June 2000 (Air Docket A–99–05, Item V–C–1). This document may also be examined from EPA's SCRAM Web site (*http://www.epa.gov/scram001*). Note that comments/responses re: AERMOD & EDMS are deferred to a companion document to be released when the SNPR is published.

[4] Environmental Protection Agency, 1993. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase I report: Interim Recommendation for Modeling Long range Transport and Impacts on Regional Visibility; EPA Publication No. EPA–454/R–93–015.

[5] Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019.

situations, acceptance will become clear and those cases that are problematic will be better identified. As suggested by comments, we have removed reference to WYNDvalley from the *Guideline*.

Implementation issues/additional guidance. Some comments suggested that the CALMET (meteorological preprocessor for CALPUFF) and CALPUFF options should be defined for a variety of specific situations. We believe that more experience is needed before specific guidance can be offered for the variety of applications envisioned that might use the CALPUFF modeling system. We placed emphasis on (1) amplifying the available guidance information, (2) expanding the data formats for meteorological input data, and (3) making the code more robust to various choices in compilers. When sufficient experience has been attained, and it has become obvious what settings should be employed for best results for certain situations, we will promulgate expanded guidance after allowing opportunity for public review and comment. In the meantime, we will release interim guidance as it becomes available to assist users in tailoring CALPUFF for application. We have created a series of frequently asked questions (FAQ) with answers which the public can access via Earth Tech's Internet Web site: (*http://www.src.com/calpuff/calpuff1.htm*). This interim FAQ list will be extended as resources permit.

For long range transport and complex winds applications, we proposed that if only National Weather Service (NWS) or comparable standard meteorological observations are employed, then five consecutive years of data should be used. We further proposed that less than five years of data were acceptable if appropriate NWS data are merged with available mesoscale meteorological fields. These proposals were generally supported by public comments,[3] but the commenters did provide a variety of opinions about how many years of data should be minimally acceptable, ranging from 1 to 5 years. As we explained in our response-to-comments, we sought to strike a balance between the need for a sufficiently robust meteorological record to ensure results of reliable integrity, while maintaining administrative and computational burdens at a practical level. In consultation with the Regional Offices, we therefore have agreed to allow use of less than five, but at least three, years of assimilated mesoscale meteorological data. More than 3 years may lead to the objectionable computations burdens noted here, whereas less than 3 provides insufficient variation in meteorological conditions to capture the range of possible concentrations. We have also clarified that when merging NWS data with mesoscale meteorological fields, the NWS data should be shown to be relevant and appropriate.

For long range transport, we proposed use of a CALPUFF screening approach on a case-by-case basis that was first outlined in the IWAQM Phase 2 report (*op. cit.*) and was generally supported by commenters. The full scope of public comments is presented and addressed in our response-to-comments document.[3] We agree with the comments suggesting use of terrain heights for each receptor ring to be representative of the Class I areas of interest. Furthermore, to ensure an appropriate degree of flexibility, we will allow the permitting agency to decide whether it will accept the CALPUFF screening results as proposed, and in that decision process will defer to the appropriate reviewing authority to decide on the details of how the CALPUFF screen is to be implemented.

Resource constraints. The full scope of public comments is presented and addressed in our response-to-comments document.[3] There was a general sense from commenters that a skilled person having experience with CALMET can perform the required processing steps. Still some commenters encouraged us to find and promote a simplification to the CALMET meteorological processing steps. We did not support the suggestion to use screening level (ISC-like) meteorological data until such time as packaged data sets are made available. This would negate the benefits of using the system to simulate trajectories over large downwind distances, thereby undermining the purpose for which CALPUFF is intended. Although the processing steps are numerous and complex, they can be managed by competent staff.

Long range transport and complex wind situations are not trivial modeling problems. All commenters were aware that to address these situations requires more information (*e.g.*, terrain heights, land use mosaic, time and space variations in meteorological conditions) than is typical when using standard plume models. Processing the input data is a necessary but demanding task. The complexity of these situations requires a selection of options to provide the flexibility to tailor the model to specific situations. The CALPUFF system is currently configured to support a specific applied approach for long range transport, while at the same time, it has the flexibility for case-by-case applications involving complex winds.

Additional analyses. Some commenters questioned whether CALPUFF has undergone sufficient testing to secure its accuracy for assessing impacts on air quality related values (AQRVs). We believe the available testing for assessing AQRVs addresses many of these concerns. In addition, it should be recognized that the FLMs are responsible for defining the relevant AQRV's of interest and the procedures to employ to assess whether there is an adverse impact. When CALPUFF is used for a visibility impact assessment, this would likely be for a Class I AQRV assessment, and the reviewing authorities are the FLMs responsible for the management and protection of the resources for the particular Class I areas involved. The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed in 1997 to provide a more consistent approach for FLMs to evaluate air pollution effects on their resources. In IWAQM's Phase 2 report, we indicated that EPA would use the procedures specified by the FLMs as a consequence of their deliberations (*e.g.*, in their FLAG report: *http://www.aqd.nps.gov/ard/flagfree/index.htm*). To assist permit applicants, the FLMs have provided procedures in the December 2000 (Phase I) FLAG report for performing such analyses as may be required. Included in these instructions, they have identified significance thresholds for potential adverse impacts, and methodologies for computing a visibility impact. The commenters are in fact addressing the FLAG procedures which are not the subject of today's action. To the extent that they were addressed in the response to comments developed by the FLMs in the FLAG Phase I report, we refer commenters to that document.

Criticism was also directed at CALPUFF's treatment of chemical transformations, which affect AQRVs. Specific concern was expressed about the sulfate and aqueous phase chemistry algorithms. As chronicled on the FLAG Web site (above), these procedures and criteria have been published and received review and comment. However, today's rule addresses the suitability of CALPUFF for PSD increment consumption and for complex wind situations (with case-by-case approval), not AQRV analyses.

Other Modeling Systems

Our proposal to remove UAM–IV from appendix A as a recommended model for ozone and to remove reference to ROM and RADM for

regional scale applications was supported by some commenters who understood that these models were no longer state-of-the-science. Those who objected to removal of UAM–IV were concerned that the Models-3/CMAQ (Community Multi-scale Air Quality) model, as a replacement for UAM–IV, was not sufficiently tested. In fact, Models-3/CMAQ is identified as only one option among currently available models that are appropriate in simulating the highly complex ozone/PM–2.5 formation and transport processes. It is the responsibility of the appropriate control agency(ies) with jurisdiction for the model application to exercise discretion in the choice of models. Alternately, criteria for using models not in appendix A are clearly delineated in revised wording that we proposed for subsection 3.2.2 of appendix W. These options should more than mitigate concerns expressed by the commenters.

We generally agree that Models-3/CMAQ and REMSAD will continue to benefit from further evaluation and testing for use in urban/regional scale assessments of ozone and PM–2.5, and are not the only models available for these applications. The same is true of all similar regional scale models. However, CMAQ and REMSAD have been successfully subjected to peer scientific reviews and are currently undergoing performance evaluations that will extend over several years as data bases become more extensive and complete for both ozone and PM–2.5.

While comment was solicited on the need to integrate ozone and fine particle impacts (*i.e.*, the ''one atmosphere'' approach) for regional scale assessments, we did not receive substantial comment. Comments on integrating analyses were supportive and comments on source-specific analyses indicated that more work was needed in this area. It is clear that further developmental efforts on estimating the impact of individual sources is necessary before specific modeling requirements are identified for such applications.

Comments [3] were generally supportive of our proposal to remove appendix B (Summaries of Alternative Air Quality Models) from appendix W and maintaining it as a PDF file on our SCRAM Internet Web site. As we stated in the preamble to the notice of proposed rulemaking for this action, appendix B of the *Guideline* was created solely for the convenience of those seeking information about alternatives to the models adopted in appendix A. The models described in appendix B may or may not have not been the subject of performance evaluations and their inclusion in appendix B does not confer special status or EPA sanction on their use. Conversely, the fact that a model has not been listed in appendix B carries no implication that its performance or acceptability for use is any poorer than appendix B listed models. Whether or not a model is listed, potential users will be subject to the same requirements, *i.e.*, to demonstrate that the model performs acceptably for its intended regulatory application. Because production and maintenance of appendix B information in the Code of Federal Regulations presents a substantial administrative burden for EPA and is not updated frequently enough to provide current information to potential users, we are moving the appendix B repository of alternative model summary descriptions to our Internet SCRAM Web site. This action offers the advantages of easier and less expensive maintenance, as well as more frequent updating, and is thus more likely to contain a comprehensive description of alternative models which have been brought to our attention. Similarly, the air quality checklist (formerly appendix C of the *Guideline*) will be available on the Web site as a PDF file.

The appendix B listing will therefore now appear as a list of *Alternative Models* (PDF file) on our Web site. We have clarified in its *Introduction and Availability* section that new models added to the list were/are not necessarily the subject of review upon their addition. On the other hand, it should be noted that the models identified in our proposal (*i.e.*, ADMS, SCIPUFF, OBODM, and CAMx) were included in the review process for today's action concerning the list of alternative models. At the request of the developer, we will remove MESOPUFF from appendix B since its function is replaced by CALPUFF.

Comments on the dispersion model ADMS argued that proprietary limitations on the availability of ADMS should not preclude it from having equal status with other Appendix A models and that it should be recommended in appendix A. However, as specified by *Guideline* paragraph 3.1.1(c)(vi), air quality models used in U.S. regulatory programs must be in the public domain at reasonable cost. This is because the source code needs to be open for public access and scrutiny to enable meaningful opportunity for public comment on new source permits, PSD increment consumption and SIPs. These criteria have been in place in U.S. regulatory programs since the inception of the *Guideline* and are needed to meet EPA's obligations under the CAA and the Administrative Procedure Act. Until the joint issues of availability (source code) and cost are addressed by the authors of ADMS, it is most appropriately listed as an alternative model for use on a case-by-case basis. Even if the model is justified on a case-by-case basis, users are responsible for making the model available for public review and comment for specific applications.

A similar comment regarding the puff model SCIPUFF did not consider that the model has not gone through the same extensive testing and regulatory evaluation as has CALPUFF, nor has it been as widely used as CALPUFF for regulatory applications. As has been done by CALPUFF's developers, a commitment to support public availability of SCIPUFF would have to be made by its supporter before it could be considered for adoption in appendix A.

Developers of neither ADMS nor SCIPUFF have addressed conflicts associated with multiple models for the same application in such a way as to assist EPA in resolving this issue. Moreover, we believe that neither ADMS nor SCIPUFF technically fill a particular technical need that is different from that occupied by the suite of refined dispersion models that EPA has promulgated for regulatory purposes after public review and comment.

Based on public comments and the rationale provided in our notice of proposed rulemaking, our decision to reference the ozone limiting method (OLM) and CAL3QHC for use in specific circumstances is justified.

Meteorological Data Issues

In our proposal we solicited comment on terminology and meaning of ''site-specific'' data and on use of surface meteorological data derived from the NWS's Automated Surface Observing System (ASOS). More specifically, we invited comment on whether the policy of modeling with the most recent 5 years of NWS meteorological data should include ASOS data and whether the period of record must be the most recent 5 years, regardless of whether it contains ASOS data.

No one provided negative comments on the use of the term ''site-specific'' or associated definitions as used in the proposed revisions. Thus, for the reasons discussed in the proposal, we will retain this terminology.

The majority of commenters who addressed the topic of ASOS data felt that the ASOS data were inferior for use with Gaussian models, though not all commenters agreed. With respect to the

use of the most recent 5 years of meteorological data, there was some concern about the reliability of ASOS data. We revised guidance to specifically address this concern by allowing flexibility in the choice of ASOS or observer-based observations depending on which provided the most representative meteorological information.

Final Action

Today's action amends appendix W of 40 CFR part 51 as detailed below:

CALPUFF

The public comments provided constructive suggestions but did not suggest altering promulgation of the CALPUFF modeling system. We will therefore promulgate use of the CALPUFF modeling system as follows:

(A) Long Range Transport

CALPUFF will be adopted as a refined model for use in sulfur dioxide and particulate matter ambient air quality standards and PSD increment impact analyses involving (1) transport greater than 50km from one or several closely spaced sources, and (2) analyses involving a mixture of both long range and short-range source-receptor relationships in a large modeling domain (*e.g.*, several industrialized areas located along a river or valley). The screening approach outlined in the IWAQM Phase 2 report is available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions.

Given the judgement and refinement involved, conducting a long range transport modeling assessment will require significant consultation with the appropriate reviewing authority, and for Class I analyses the appropriate FLM. To facilitate use of complex air quality and meteorological modeling systems, a written protocol may be considered for developing consensus in the methods and procedures to be followed.

(B) Complex Winds

(1) On a case-by-case basis, the CALPUFF modeling system may be applied for air quality estimates involving complex meteorological conditions, where the assumptions of steady-state straight-line transport both in time and space are inappropriate.

(2) In such situations, where the otherwise preferred dispersion model is found to be less appropriate, use of the CALPUFF modeling system will be in accordance with the procedures and requirements outlined in paragraph 3.2.2(e) of the *Guideline.*

The public comments provided constructive suggestions, but did not suggest altering the meteorological data requirements for refined modeling assessments using the CALPUFF modeling system. Therefore, we will promulgate use of the CALPUFF modeling system with the following meteorological data requirements. For long range transport and for complex winds situations, there are two possibilities:

(A) If only NWS or comparable standard meteorological observations are employed, then five years of meteorological data should be used.

(B) If mesoscale meteorological fields are employed with appropriate NWS observations, then less than five years but at least three years of meteorological data may be used. Following the suggestions provided in public comments, we revised the *Guideline* to emphasize that appropriate NWS observations should be used in conjunction with mesoscale meteorological data.

In response to the suggestions provided in public comments, we: (1) Created a series of frequently asked questions to provide additional technical information to users, which will be made publicly available via Earth Tech's Internet Web site, (2) expanded the meteorological and precipitation data formats that can be processed, (3) have tested and made changes as necessary that allow the modeling software to be compiled by several Fortran compilers, thus making the code more robust to various choices in compilers, and (4) will maintain and make publicly available via our Web site, a list of technical papers and reports that describe testing and evaluation of the CALPUFF modeling system in a variety of situations and thus provide a basis for wider use of the CALPUFF modeling system.

For appropriate applications, CALPUFF *may be* used during the one-year period following the promulgation of today's notice. After one year following promulgation of today's notice, CALPUFF should be used for appropriate applications.

Other Modeling Systems

We have removed UAM–IV from appendix A for urban ozone applications and removed reference to ROM and RADM for regional scale applications to reflect the current state-of-science. Similarly, we have identified Models-3/CMAQ and REMSAD as example modeling systems that have been evaluated and peer reviewed for regional scale applications, and make clear that this does not preclude the use of other models.

We have removed appendix B and appendix C from appendix W and placed equivalent counterparts on our SCRAM Internet Web site. Former appendix B will simply become a list of alternative model summaries, and should be readily updated as new models in the proper format are submitted and not on a restrictive schedule. Given the current status of ADMS and SCIPUFF, as well as OBODM, CAMx and UAMV (an update to UAM–IV), all have now been included in the web-based Alternative Models list.

As proposed, we have referenced OLM and CAL3QHC for use in specific circumstances, and removed RAM and CDM from appendix A.

Meteorological Data Issues

The terminology for ''site-specific'' has been implemented as proposed since there was a lack of negative comment. The prevailing concept is, as commenters recognized, *representativeness*, and this is now emphasized in our guidance.

Due to limitations of ASOS data for use with standard dispersion models, paragraph 8.3.1.2(a) of appendix W has been revised to indicate that where the latest 5 years of data includes ASOS data (now the typical situation) discretion should be used. Where judgment indicates ASOS data are inadequate for cloud cover observations, the most recent 5 years of NWS data that are observer-based may be considered for use.

In response to public comment, we have updated our meteorological data processors (*i.e.*, MPRM and CALMET) to allow processing of meteorological data formats from the National Climatic Data Center necessary to operate associated air quality models; no further updates to MPRM are necessary at this time. The meteorological monitoring guidance [6] has been updated.

Final Editorial Changes to Appendix W

Preface

You will note some minor revisions to reflect current EPA practice.

Section 2

In a streamlining effort, we removed section 2.2 and added a new section 2.3 to address model availability.

[6] Environmental Protection Agency, 2000. Meteorological Monitoring Guidance for Regulatory Modeling Applications. EPA Publication No. EPA–454/R–99–005. U.S. Environmental Protection Agency, Research Triangle Park, NC. (*www.epa.gov/scram001*).

Section 3

As proposed, we revised section 3 to more accurately reflect current EPA practice, *e.g.,* functions of the Model Clearinghouse and enhanced criteria for the use of alternative models. Requirements for alternative models when preferred models are less appropriate for specific applications have been clarified. These requirements include scientific peer review and the establishment of an acceptable protocol prior to the model's use.

Section 4

We revised section 4.2.2 to reflect the widespread use of short-term models for all averaging periods. Hence, we no longer reference long-term models (*e.g.,* ISCLT) in the *Guideline*.[7]

Section 5

To simplify, the list of acceptable, yet equivalent, screening techniques for complex terrain was removed. CTSCREEN and guidance for its use are retained; CTSCREEN remains acceptable for all terrain above stack top. The screening techniques whose descriptions we removed, *i.e.,* Valley (as implemented in SCREEN3), COMPLEX I (as implemented in ISC3), SHORTZ/LONGZ, and RTDM remain available for use in applicable cases where established/accepted procedures are used. Consultation with the appropriate reviewing authority is still advised for application of these screening models.

Section 6

As proposed, we revised section 6 to reflect the new PM–2.5 and ozone ambient air quality standards that were issued on July 18, 1997 (62 FR 38652 & 62 FR 38856). You will note that we inserted respective subsections for particulate matter and lead from section 8, so that section 6 now primarily contains modeling guidance for the criteria pollutants regulated in Part 51 (SO2 analyses are covered in section 4). We also updated information on receptor models.

- We enhanced the subsection on particulate matter as much as possible to reflect the Agency's current thinking on approaches for fine particulates (PM–2.5). You will note that we removed the references to the Climatological Dispersion Model (CDM 2.0) as well as to RAM from this section, and also deleted CDM and RAM from appendix A (*see* below).
- We enhanced the subsection on ozone to better reflect modeling approaches we currently envision, and added a reference for current guidance on ozone attainment demonstrations.[8] You will note that we removed the reference to the Urban Airshed Model (UAM–IV) from this section, and deleted UAM from appendix A. UAM–IV is no longer the recommended photochemical model for attainment demonstrations for ozone.
- We updated the subsection on carbon monoxide by removing reference to RAM. While UAM–IV is deleted from appendix A, reference to areawide analyses is retained. For refined intersection modeling, CAL3QHCR is specifically mentioned for use on a case-by-case basis.
- In the subsection on NO_2 models, we added a third tier for the screening approach that allows the use of the ozone limiting method on a case-by-case basis. You may recall that this approach was removed with the *Guideline* update promulgated on August 9, 1995 (60 FR 40465).
- In the subsection on lead, we deleted references to 40 CFR 51.83, 51.84, and 51.85, conforming to previous EPA action (51 FR 40661).

Section 7

For regional scale modeling, we removed reference to the Regional Oxidant Model (ROM) and the Regional Acid Deposition Model (RADM) from section 7 because they are outdated and replaced by a reference to Models-3[9] in section 6. We enhanced the subsection on visibility to reflect the provisions of the Clean Air Act, including those for reasonable attribution of visibility impairment and regional haze, as well as the new NAAQS for PM–2.5. For assessment of reasonably attributable haze impairment due to one or a small group of sources, CALPUFF is available for use on a case-by-case basis. We identify REMSAD and new approaches under the Models-3/CMAQ umbrella for possible use to develop and evaluate national policy and assist State and local control agencies. For long range transport analyses, we recommend the CALPUFF modeling system. To facilitate use of a complex air quality and meteorological modeling system like CALPUFF, we stipulate that a written protocol may be considered for developing consensus in the methods and procedures to be followed.

Section 8

As proposed, we revised section 8 to better reflect our current regulatory practice for the general modeling considerations addressed.

- We revised subsection 8.2.6 to refer to subsection 6.2.3 for details on chemical transformation of NO_X.
- We merged subsection 8.2.8 (Urban/Rural Classification) with subsection 8.2.3 (Dispersion Coefficients), and removed reference to WYNDvalley.
- We merged discussions in subsections 8.2.9 (Fumigation) and 8.2.10 (Stagnation) into one new subsection (8.2.8—Complex Winds), and specifically identify the availability of CALPUFF for certain situations on a case-by-case basis.
- We removed the distinction between short-term and long-term models because when assessing the impacts from criteria air pollutants, long-term estimates are now practicable using hour-by-hour meteorological data.

Section 9

As proposed,

- We revised subsection 9.2.3 (recommendations for estimating background concentrations from nearby sources) to reflect a settlement reached on October 16, 1997 in a petition brought by the Utility Air Regulatory Group (UARG). In accordance with the settlement, we are clarifying the definition of ''nearby sources.'' The ''maximum allowable emission limit,'' specified in Tables 9–1 and 9–2, is tied in certain circumstances[10] to the emission rate representative of a nearby source's maximum physical capacity to emit. We also clarify that nearby sources should be modeled only when they operate at the same time as the primary source(s) being modeled. Where a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the appropriate reviewing authority that this is, in fact, the case. We added footnotes to Tables 9–1 and 9–2 to refer back to applicable paragraphs of subsection 9.2.3 that provide the necessary clarification.

[7] Note that because appendix W is designed to guide assessments for criteria pollutants, the proposed discontinuation of ISCLT for purposes herein does not preclude its use for other pollutant assessments, as applicable. For example, the ASPEN model (Assessment System for Population Exposure Nationwide) uses the capabilities of ISCLT to estimate ambient concentrations of toxic pollutants nationwide by census tract. Such applications require the abbreviated computing possible with ISCLT.

[8] Environmental Protection Agency, 1998. Use of Models and Other Analyses in Attainment Demonstrations for the 8-hr Ozone NAAQS (Draft). Office of Air Quality Planning & Standards, Research Triangle Park, NC. (Docket No. A–99–05, II–A–14) (Also available on SCRAM Web site, *http://www.epa.gov/scram001,* as *draft8hr.pdf*)

[9] Environmental Protection Agency, 1998. EPA Third-Generation Air Quality Modeling System. Models-3, Volume 9b: User Manual. EPA Publication No. EPA–600/R–98/069(b). Office of Research and Development, Washington, DC.

[10] See section 8.2.3 of the *Guideline*.

• We enhanced section 9.3 (Meteorological Input Data) to develop concepts of meteorological data representativeness, minimum meteorological data requirements, and the use of prognostic mesoscale meteorological models in certain situations. These models (*e.g.*, the Penn State/NCAR MM4 [11,12,13] or MM5 [14] model) assimilate meteorological data from several surface and upper air stations in or near a domain and generate a 3-dimensional field of wind, temperature and relative humidity profiles. We revised recommendations for length of record for meteorological data (subsection 9.3.1.2) for long range transport and complex wind situations. In paragraph 9.3.1.2(d) we specifically allow the use of at least three years (need not be consecutive) of assimilated mesoscale meteorological data.

• We revised subsection 9.3.2 (National Weather Service Data) to inform users that National Weather Service (NWS) surface and upper air meteorological data are available on CD–ROM from the National Climatic Data Center. Recent years of such surface data are derived from the NWS's Automated Surface Observing System (ASOS). We revised subsection 9.3.1.2 to address the possible occurrence of ASOS data within 5-year sets of meteorological data.

• We revised subsection 9.3.3.1 to clarify that, while site-specific measurements are frequently made ''on-property'' (*i.e.*, on the source's premises), acquisition of adequately representative site-specific data does not preclude collecting data from a location off property. Conversely, collection of meteorological data on property does not of itself guarantee adequate representativeness. The subsection was also enhanced by improving the discussion of collection of temperature difference measurements; a paragraph was developed that focuses on measurement of aloft winds for simulation of plume rise, dispersion and transport (some details for CTDMPLUS were moved to its appendix A descriptions); a paragraph was added to address collection and use of direct turbulence measurements; and the paragraph that discusses meteorological data preprocessor has been enhanced.

• We revised subsection 9.3.3.2 by removing reference to the STAR processing routine because ISCLT and CDM 2.0 (for which STAR formatted data were developed) have been removed.

• We revised subsection 9.3.4 (Treatment of Calms) to increase accuracy.

Section 10

We updated section 10 to reflect current thinking and state-of-the-practice regarding model accuracy and uncertainty.

Section 11

As proposed, we made minor revisions to section 11 to reflect the new ambient air quality standards for fine particles and ozone. Because EPA has revised its emissions trading program for SO_2, we have deleted subsection 11.2.3.4.

Section 12 & 13

We redesignated section 13 (Bibliography) as section 12 (References) and *vice-versa*. We revised them by adding some references, deleting obsolete/superseded ones, and resequencing. You will note that a peer scientific review for CALPUFF has been included.

Section 14

In a streamlining effort, we removed section 14 (Glossary). Given current familiarity with modeling terminology, we no longer consider that maintenance of such a glossary is as necessary as it once may have been. For these and other reasons relating to Office of Federal Register policy (see discussion of appendix B below), we have revised the glossary and placed it on our Internet Web site.

Appendix A

We updated the introduction to appendix A (section A.0). As mentioned before, we added CALPUFF to appendix A. We removed the Climatological Dispersion Model (CDM 2.0), the Gaussian-Plume Multiple Source Air Quality Algorithm (RAM), and the Urban Airshed Model (UAM) from appendix A. These models have been superseded and are no longer considered preferred techniques.

Appendix B

We have moved the appendix B repository of alternate model summary descriptions to our Internet SCRAM Web site (*http://www.epa.gov/scram001*). Placement of this material on the Web site offers many advantages. In this format, we will be able to maintain the list and model descriptions more easily and inexpensively.

Several model developers have submitted new dispersion models for inclusion in this Web site repository of alternate models:

• Second-Order Closure Integrated Puff Model (SCIPUFF);

• Open Burn/Open Detonation Dispersion Model (OBODM);

• Atmospheric Dispersion Modeling System (ADMS);

• Comprehensive Air Quality Model with extensions (CAMx); and

• Urban Airshed Model—V (UAMV).

As described below, codes (executables) for these models, as well as applicable documentation, have been uploaded to our Internet SCRAM Web site. Finally, we deleted a model currently listed in appendix B, MESOPUFF II, which CALPUFF replaces.

Appendix C

As proposed, we also moved appendix C (Example Air Quality Analysis Checklist) from the CFR to our Internet SCRAM Web site. We believe this checklist is outdated, in need of revision, and would be more practical to maintain if posted on EPA's Internet SCRAM Web site.

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

[11] Stauffer, D.R. and Seaman, N.L., 1990. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part I: Experiments with synoptic-scale data. Monthly Weather Review, 118: 1250–1277.

[12] Stauffer, D.R., Seaman, N.L., and Binkowski, F.S., 1991. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part II: Effect of data assimilation within the planetary boundary layer. Monthly Weather Review, 119: 734–754.

[13] Hourly Modeled Sounding Data. MM4—1990 Meteorological Data, 12-volume CD–ROM. Jointly produced by NOAA's National Climatic Data Center and Atmospheric Sciences Modeling Division. August 1995. Can be ordered from NOAA National Data Center's Internet Web site @ *www.nndc.noaa.gov/*.

[14] *http://www.mmm.ucar.edu/mm5/mm5-home.html*

or loan programs of 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 Order.

This rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that meets the RFA default definitions for small business (based on Small Business Administration size standards), as described in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule will not have any impacts on small entities because existing and new sources of air emissions that model air quality for State Implementation Plans and the prevention of significant deterioration are typically not small entities. The modeling techniques described today are primarily used by state air control agencies and by industry.

To the extent that any small entities would ever have to model air quality using the modeling techniques described in today's rule, the impacts of using updated modeling techniques would be minimal, if not non-existent. The action promulgated today incorporates comments received at the 7th Conference on Air Quality Modeling in June 2000 in Washington, DC. The rule features a new modeling system for calculating PSD increment consumption—CALPUFF—and serves to increase efficiency and accuracy. This system employs procedural concepts that are very similar to those currently used, changing only mathematical formulations and specific data elements. No impacts on small entities in the use of CALPUFF are anticipated. We do not believe that CALPUFF's use poses a significant or unreasonable burden on any small entities. This final action imposes no new regulatory burdens and, as such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule recommends a new modeling system for calculating PSD increment consumption—CALPUFF—that increases efficiency and accuracy. CALPUFF has been used for these purposes on a case-by-case basis (per *Guideline subsection* 3.2.2) for several years, as has its predecessor—MESOPUFF II. While *Guideline subsection* 3.2.2 still allows for alternative models to be used, EPA is now sufficiently confident in CALPUFF's technical formulation and performance to adopt it in appendix A of the *Guideline*. Since the two modeling systems are comparable in scope and purpose, use of CALPUFF itself does not involve any increase in costs. The optional use of prognostic meteorological data (*e.g.*, MM5) input files, however, may result in a small incremental cost increase. To the extent that the use of more refined models with comprehensive input data bases reduces the potential for over-or underprediction of air quality impacts, air quality management programs become more economically efficient. Moreover, modeling costs (which include those for input data acquisition) are typically among the implementation costs that are considered as part of the programs (*i.e.*, PSD) that establish and periodically revise requirements for compliance. Any incremental modeling costs attributable to today's rule do not approach the $100 million threshold prescribed by UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule therefore contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism '' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.'' ''Policies that have federalism implications '' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities (see D. Unfunded Mandates Reform Act of 1995, above). The rule would add better, more accurate techniques for air dispersion modeling analyses and does not impose any additional requirements for any of the affected parties covered under Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. As stated above (see D. Unfunded Mandates Reform Act of 1995, above), the rule does not impose any new requirements for calculating PSD increment consumption, and does not impose any additional requirements for the regulated community, including Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this rule.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) to be ''economically significant '' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both the criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks '' (62 FR 19885, April 23, 1997) because it does not impose an economically significant regulatory action as defined by Executive Order 12866 and the action does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act of 1998

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), and will be effective 30 days from the publication date of this notice.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 2, 2003.

Christine Todd Whitman,

Administrator.

■ Part 51, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 100; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to Part 51 revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act, Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emission limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Three primary on-going activities provide direct input to revisions of the *Guideline*. The first is a series of annual

EPA workshops conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity is the solicitation and review of new models from the technical and user community. In the March 27, 1980 **Federal Register**, a procedure was outlined for the submittal to EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by EPA, are considered for recognition in the *Guideline*. The third activity is the extensive on-going research efforts by EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics are included as needed. EPA does not make changes to the guidance on a predetermined schedule, but rather on an as needed basis. EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

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1.0 Introduction

a. The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source reviews (NSR), including prevention of significant deterioration (PSD). (*See* Ref. 1, 2, 3). Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies and by industry. The guidance is appropriate for use by other Federal agencies and by State agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgement.

b. Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources. Also, the impacts of new sources that do not yet exist can only be determined through modeling. Thus, models, while uniquely filling one program need, have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to dispersion models, with due regard for the strengths and weaknesses of both analysis techniques. Measurements are particularly useful in assessing the accuracy of model estimates. The use of air quality measurements alone however could be preferable, as detailed in a later section of this document, when models are found to be unacceptable and monitoring data with sufficient spatial and temporal coverage are available.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling ''cookbook''. There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgement are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgement of experienced meteorologists and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the States and EPA Regional Offices, by many industries and trade associations, and also by the deliberations of Congress, that consistency in

the selection and application of models and data bases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies and specifying emission limits. Such consistency is not, however, promoted at the expense of model and data base accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and data bases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models, data bases, requirements for concentration estimates, the use of measured data in lieu of model estimates, and model evaluation procedures. Models are identified for some specific applications. The guidance provided here should be followed in air quality analyses relative to State Implementation Plans and in supporting analyses required by EPA, State and local agency air programs. EPA may approve the use of another technique that can be demonstrated to be more appropriate than those recommended in this guide. This is discussed at greater length in Section 3. In all cases, the model applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from this guide should be carefully documented and fully supported.

f. From time to time situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with the headquarters, Regional Office, State, and local agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models and data bases. The workshops serve to provide further explanations of *Guideline* requirements to the Regional Offices and workshop reports are issued with this clarifying information. In addition, findings from on-going research programs, new model submittals, or results from model evaluations and applications are continuously evaluated. Based on this information changes in the guidance may be indicated.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in Appendix W of Part 51. EPA will promulgate proposed and final rules in the **Federal Register** to amend this Appendix. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled if requested.

h. A wide range of topics on modeling and data bases are discussed in the *Guideline.* Section 2 gives an overview of models and their appropriate use. Section 3 provides specific guidance on the use of ''preferred'' air quality models and on the selection of alternative techniques. Sections 4 through 7 provide recommendations on modeling techniques for application to simple-terrain stationary source problems, complex terrain problems, and mobile source problems. Specific modeling requirements for selected regulatory issues are also addressed. Section 8 discusses issues common to many modeling analyses, including acceptable model components. Section 9 makes recommendations for data inputs to models including source, meteorological and background air quality data. Section 10 covers the uncertainty in model estimates and how that information can be useful to the regulatory decision-maker. The last chapter summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR Part 51 itself contains an appendix: Appendix A. Thus, when reference is made to ''Appendix A'' in this document, it refers to Appendix A to Appendix W to 40 CFR Part 51. Appendix A contains summaries of refined air quality models that are ''preferred'' for specific applications; both EPA models and models developed by others are included.

2.0 Overview of Model Use

a. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the evaluation of source impact depends upon several factors. These include: (1) The meteorological and topographic complexities of the area; (2) the level of detail and accuracy needed for the analysis; (3) the technical competence of those undertaking such simulation modeling; (4) the resources available; and (5) the detail and accuracy of the data base, i.e., emissions inventory, meteorological data, and air quality data. Appropriate data should be available before any attempt is made to apply a model. A model that requires detailed, precise, input data should not be used when such data are unavailable. However, assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in emissions and meteorological conditions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

b. Air quality models have been applied with the most accuracy, or the least degree of uncertainty, to simulations of long term averages in areas with relatively simple topography. Areas subject to major topographic influences experience meteorological complexities that are extremely difficult to simulate. Although models are available for such circumstances, they are frequently site specific and resource intensive. In the absence of a model capable of simulating such complexities, only a preliminary approximation may be feasible until such time as better models and data bases become available.

c. Models are highly specialized tools. Competent and experienced personnel are an essential prerequisite to the successful application of simulation models. The need for specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. A model applied improperly, or with inappropriate data, can lead to serious misjudgements regarding the source impact or the effectiveness of a control strategy.

d. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required depend on the nature of the model and its complexity, the detail of the data base, the difficulty of the application, and the amount and level of expertise required. The costs of manpower and computational facilities may also be important factors in the selection and use of a model for a specific analysis. However, it should be recognized that under some sets of physical circumstances and accuracy requirements, no present model may be appropriate. Thus, consideration of these factors should lead to selection of an appropriate model.

2.2 Levels of Sophistication of Models

a. There are two levels of sophistication of models. The first level consists of relatively simple estimation techniques that generally use preset, worst-case meteorological conditions to provide conservative estimates of the air quality impact of a specific source, or source category. These are called screening techniques or screening models. The purpose of such techniques is to eliminate the need of more detailed modeling for those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS)[4] or the allowable prevention of significant deterioration (PSD) concentration increments.[2,3] If a screening technique indicates that the concentration contributed by the source exceeds the PSD increment or the increment remaining to just meet the NAAQS, then the second level of more sophisticated models should be applied.

b. The second level consists of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result they provide a more refined and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies. These are referred to as refined models.

c. The use of screening techniques followed, as appropriate, by a more refined analysis is always desirable, however there are situations where the screening techniques are practically and technically the only viable option for estimating source impact. In such cases, an attempt should be made to acquire or improve the necessary data bases and to develop appropriate analytical techniques.

2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline,* codes, associated documentation and other useful information are available for download from EPA's Support Center for Regulatory Air Modeling (SCRAM) Internet Web site at *http://www.epa.gov/scram001.* A list of

alternate models that can be used with case-by-case justification (subsection 3.2) and an example air quality analysis checklist are also posted on this Web site. This is a site with which modelers should become familiar.

3.0 Recommended Air Quality Models

a. This section recommends the approach to be taken in determining refined modeling techniques for use in regulatory air quality programs. The status of models developed by EPA, as well as those submitted to EPA for review and possible inclusion in this guidance, is discussed. The section also addresses the selection of models for individual cases and provides recommendations for situations where the preferred models are not applicable. Two additional sources of modeling guidance are the Model Clearinghouse and periodic Regional/State/Local Modelers workshops.

b. In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the ''*appropriate reviewing authority*''. In some EPA regions, authority for NSR and PSD permitting and related activities has been delegated to State and even local agencies. In these cases, such agencies are ''*representatives*'' of the respective regions. Even in these circumstances, the Regional Office retains the ultimate authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as ''*Regional Administrator*''), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (*http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts*) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, especially if other than preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and are encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.

d. It should not be construed that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific models is needed to promote consistency in model selection and application.

e. The 1980 solicitation of new or different models from the technical community and the program whereby these models were evaluated, established a means by which new models are identified, reviewed and made available in the *Guideline.* There is a pressing need for the development of models for a wide range of regulatory applications. Refined models that more realistically simulate the physical and chemical process in the atmosphere and that more reliably estimate pollutant concentrations are needed. Thus, the solicitation of models is considered to be continuous.

3.1 Preferred Modeling Techniques

3.1.1 Discussion

a. EPA has developed models suitable for regulatory application. Other models have been submitted by private developers for possible inclusion in the *Guideline.* These refined models have undergone evaluation exercises [7,8,9,10,11,12,13,14,15] that include statistical measures of model performance in comparison with measured air quality data as suggested by the American Meteorological Society [16] and, where possible, peer scientific reviews. [17,18,19,20,21]

b. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in Appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in Appendix A is selected on the basis of other factors such as past use, public familiarity, cost or resource requirements, and availability. No further evaluation of a preferred model is required for a particular application if the EPA recommendations for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in Appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in subsection 3.2.

c. The solicitation of new refined models which are based on sounder scientific principles and which more reliably estimate pollutant concentrations is considered by EPA to be continuous. Models that are submitted in accordance with the established provisions will be evaluated as submitted. These requirements are:

i. The model must be computerized and functioning in a common computer code suitable for use on a variety of computer systems.

ii. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for currently recommended models.

iii. The model must be accompanied by a complete test data set including input parameters and output results. The test data must be included in the user's guide as well as provided in computer-readable form.

iv. The model must be useful to typical users, *e.g.,* State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model available to users at reasonable cost or make it available for public access through the Internet or National Technical Information Service: the model cannot be proprietary.

d. The evaluation process will include a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate data base and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

3.1.2 Recommendations

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user should select a model from that appendix. These models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary of Appendix A. Further recommendations for the application of these models to specific source problems are found in subsequent sections of the *Guideline.*

b. If changes are made to a preferred model without affecting the concentration estimates, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer or those that affect only the format or averaging time of the model results. However, when any changes are made, the Regional Administrator should require a test case example to demonstrate that the concentration estimates are not affected.

c. A preferred model should be operated with the options listed in Appendix A as ''Recommendations for Regulatory Use.'' If other options are exercised, the model is no longer ''preferred.'' Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status as a preferred model. Use of the model must then be justified on a case-by-case basis.

3.2 Use of Alternative Models

3.2.1 Discussion

a. Selection of the best techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this guide cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. EPA reports [22,23] are available to assist in developing a consistent approach when justifying the use of other than the preferred modeling techniques recommended

in the *Guideline.* An ASTM reference [24] provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy. An EPA reference [25] provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations. In many cases, this protocol should be considered preferentially to the material in Chapter 3 of reference 22. The procedures in these documents provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. The documents contain procedures for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This section discusses the use of alternate modeling techniques and defines three situations when alternative models may be used.

3.2.2 Recommendations

a. Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.

b. An alternative model should be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may normally be approved for use: (1) If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model; (2) if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in Appendix A; or (3) if the preferred model is less appropriate for the specific application, or there is no preferred model. Any one of these three separate conditions may make use of an alternative model acceptable. Some known alternative models that are applicable for selected situations are listed on EPA's SCRAM Internet Web site (subsection 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the maximum or highest, second highest concentrations are within 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. Two percent was selected as the basis for equivalency since it is a rough approximation of the fraction that PSD Class I increments are of the NAAQS for SO^2, *i.e.,* the difference in concentrations that is judged to be significant. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, the procedures and techniques for determining the acceptability of a model for an individual case based on superior performance are contained in references 22–25 should be followed, as appropriate. Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative refined model may be used provided that:

i. The model has received a scientific peer review;

ii. The model can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The data bases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model have shown that the model is not biased toward underestimates; and

v. A protocol on methods and procedures to be followed has been established.

3.3 Availability of Supplementary Modeling Guidance

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse [5] and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives.

b. The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.

4.0 Simple-Terrain Stationary Source Models

4.1 Discussion

a. Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. The models recommended in this section are generally used in the air quality impact analysis of stationary sources for most criteria pollutants. The averaging time of the concentration estimates produced by these models ranges from 1 hour to an annual average.

b. In the early 1980s, model evaluation exercises were conducted to determine the ''best, most appropriate point source model'' for use in simple terrain.[8,17] No one model was found to be clearly superior and, based on past use, public familiarity, and availability, ISC (predecessor to ISC3 [26]) became the recommended model for a wide range of regulatory applications. Other refined models which also employed the basic Gaussian kernel, *i.e.*, BLP, CALINE3, OCD, and EDMS, were developed for specialized applications (Appendix A). Performance evaluations were also made for these models, which are identified in Appendix A.

4.2 Recommendations

4.2.1 Screening Techniques

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses. EPA has published guidance for screening procedures,[27] and a computerized version of the recommended screening technique, SCREEN3, is available.[28]

b. All screening procedures should be adjusted to the site and problem at hand. Close attention should be paid to whether the area should be classified urban or rural in accordance with subsection 8.2.3. The climatology of the area should be studied to help define the worst-case meteorological conditions. Agreement should be reached between the model user and the appropriate reviewing authority (paragraph 3.0(b)) on the choice of the screening model for each analysis, and on the input data as well as the ultimate use of the results.

4.2.2 Refined Analytical Techniques

a. A brief description of preferred models for refined applications is found in Appendix A. Also listed in that appendix are the model input requirements, the standard options that should be selected when running the program, and output options.

b. When modeling for compliance with short term NAAQS and PSD increments is of primary concern, a short term model may be used to provide long term concentration estimates. The conversion from long term to short term concentration averages by any transformation technique is not acceptable in regulatory applications.

c. The state-of-the-science for modeling atmospheric deposition is evolving and the best techniques are currently being assessed and their results are being compared with observations. Consequently, the approach taken for any purpose should be coordinated with the appropriate reviewing authority (paragraph 3.0(b)).

5.0 Model Use in Complex Terrain

5.1 Discussion

a. For the purpose of the *Guideline,* complex terrain is defined as terrain exceeding the height of the stack being

modeled. Complex terrain dispersion models are normally applied to stationary sources of pollutants such as SO_2 and particulates.

b. A major outcome from the EPA Complex Terrain Model Development project has been the publication of a refined dispersion model (CTDM) suitable for regulatory application to plume impaction assessments in complex terrain.[29] Although CTDM as originally produced was only applicable to those hours characterized as neutral or stable, a computer code for all stability conditions—CTDMPLUS—together with a user's guide,[30] and site specific meteorological and terrain data processors [31,32] is available. Moreover, CTSCREEN,[33] a version of CTDMPLUS that does not require site specific meteorological data inputs, is also available as a screening technique.

c. The methods discussed in this section should be considered in two categories: (1) Screening techniques, and (2) the refined dispersion model, CTDMPLUS, discussed in this subsection and listed in Appendix A.

d. Continued improvements in ability to accurately model plume dispersion in complex terrain situations can be expected, *e.g.*, from research on lee side effects due to terrain obstacles. New approaches to improve the ability of models to realistically simulate atmospheric physics, *e.g.*, hybrid models which incorporate an accurate wind field analysis, will ultimately provide more appropriate tools for analyses. Such hybrid modeling techniques are also acceptable for regulatory applications after the appropriate demonstration and evaluation.[22]

5.2 Recommendations

a. Recommendations in this section apply primarily to those situations where the impaction of plumes on terrain at elevations equal to or greater than the plume centerline during stable atmospheric conditions are determined to be the problem. If a violation of any NAAQS or the controlling increment is indicated by using any of the preferred screening techniques, then a refined complex terrain model may be used. Phenomena such as fumigation, wind direction shear, lee-side effects, building wake- or terrain-induced downwash, deposition, chemical transformation, variable plume trajectories, and long range transport are not addressed by the recommendations in this section.

b. Where site specific data are used for either screening or refined complex terrain models, a data base of at least 1 full-year of meteorological data is preferred. If more data are available, they should be used. Meteorological data used in the analysis should be reviewed for both spatial and temporal representativeness.

c. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

d. When CTSCREEN or CTDMPLUS is used, digitized contour data must be first processed by the CTDM Terrain Processor [32] to provide hill shape parameters in a format suitable for direct input to CTDMPLUS. Then the user supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may ''appear to the plume'' as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

e. The user is encouraged to confer with the Regional Office if any unresolvable problems are encountered with any screening or refined analytical procedures, *e.g.*, meteorological data, receptor siting, or terrain contour processing issues.

5.2.1 Screening Techniques

a. CTSCREEN [33] can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The model description and user's instructions are contained in the user's guide.[33] The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[32] A discussion of the model's performance characteristics is provided in a technical paper.[34] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σ_v, σ_w), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u_*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. Table 5–1 contains the matrix of meteorological variables that is used for each CTSCREEN analysis. There are 96 combinations, including exceptions, for each wind direction for the neutral/stable case, and 108 combinations for the unstable case. The specification of wind direction, however, is handled internally, based on the source and terrain geometry. Although CTSCREEN is designed to address a single source scenario, there are a number of options that can be selected on a case-by-case basis to address multi-source situations. However, the appropriate reviewing authority (paragraph 3.0(b)) should be consulted, and concurrence obtained, on the protocol for modeling multiple sources with CTSCREEN to ensure that the worst case is identified and assessed. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

b. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

c. As mentioned above, digitized contour data must be preprocessed [32] to provide hill shape parameters in suitable input format. The user then supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may ''appear to the plume'' as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

d. Other screening techniques, *e.g.*, Valley (as implemented in SCREEN3 [28]), COMPLEX I (as implemented in ISC3 [26]), SHORTZ/LONGZ [35], and RTDM [36] may be acceptable for complex terrain cases where established procedures are used. The user is encouraged to confer with the appropriate reviewing authority (paragraph 3.0(b)) if any unresolvable problems are encountered, *e.g.*, applicability, meteorological data, receptor siting, or terrain contour processing issues.

5.2.2 Refined Analytical Techniques

a. When the results of the screening analysis demonstrate a possible violation of NAAQS or the controlling PSD increments, a more refined analysis may need to be conducted.

b. The Complex Terrain Dispersion Model PLus Algorithms for Unstable Situations (CTDMPLUS) is a refined air quality model that is preferred for use in all stability conditions for complex terrain applications. CTDMPLUS is a sequential model that requires five input files: (1) General program specifications; (2) a terrain data file; (3) a receptor file; (4) a surface meteorological data file; and (5) a user created meteorological profile data file. Two optional input files consist of hourly emissions parameters and a file containing upper air data from rawinsonde data files, *e.g.*, a National Climatic Data Center TD–6201 file, unless

there are no hours categorized as unstable in the record. The model description and user instructions are contained in Volume 1 of the User's Guide.[30] Separate publications[32,31] describe the terrain preprocessor system and the meteorological preprocessor program. In *Part I* of a technical article[37] is a discussion of the model and its preprocessors; the model's performance characteristics are discussed in *Part II* of the same article.[38] The size of the CTDMPLUS executable file on a personal computer is approximately 360K bytes. The model produces hourly average concentrations of stable pollutants, *i.e.*, chemical transformation or decay of species and settling/deposition are not simulated. To obtain concentration averages corresponding to the NAAQS, *e.g.*, 3- or 24-hour, or annual averages, the user must execute a postprocessor program such as CHAVG. CTDMPLUS is applicable to all receptors on terrain elevations above stack top. However, the model contains no algorithms for simulating building downwash or the mixing or recirculation found in cavity zones in the lee of a hill. The path taken by a plume through an array of hills cannot be simulated. CTDMPLUS does not explicitly simulate calm meteorological periods, and for those situations the user should follow the guidance in subsection 9.3.4. The user should follow the recommendations in the User's Guide under General Program Specifications for: (1) Selecting mixed layer heights, (2) setting minimum scalar wind speed to 1 m/s, and (3) scaling wind direction with height. Close coordination with the Regional Office is essential to insure a consistent, technically sound application of this model.

c. The performance of CTDMPLUS is greatly improved by the use of meteorological data from several levels up to plume height. However, due to the vast range of source-plume-hill geometries possible in complex terrain, detailed requirements for meteorological monitoring in support of refined analyses using CTDMPLUS should be determined on a case-by-case basis. The following general guidance should be considered in the development of a meteorological monitoring protocol for regulatory applications of CTDMPLUS and reviewed in detail by the Regional Office before initiating any monitoring. As appropriate, EPA guidance (see reference 100) should be consulted for specific guidance on siting requirements for meteorological towers, selection and exposure of sensors, etc. As more experience is gained with the model in a variety of circumstances, more specific guidance may be developed.

d. Site specific meteorological data are critical to dispersion modeling in complex terrain and, consequently, the meteorological requirements are more demanding than for simple terrain. Generally, three different meteorological files (referred to as surface, profile, and rawin files) are needed to run CTDMPLUS in a regulatory mode.

e. The surface file is created by the meteorological preprocessor (METPRO)[31] based on site specific measurements or estimates of solar and/or net radiation, cloud cover and ceiling, and the mixed layer height. These data are used in METPRO to calculate the various surface layer scaling parameters (roughness length, friction velocity, and Monin-Obukhov length) which are needed to run the model. All of the user inputs required for the surface file are based either on surface observations or on measurements at or below 10m.

f. The profile data file is prepared by the user with site specific measurements (from at least three levels) of wind speed, wind direction, turbulence, and potential temperature. These measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

g. Locating towers on nearby terrain to obtain stack height or plume height measurements for use in profiles by CTDMPLUS should be avoided unless it can clearly be demonstrated that such measurements would be representative of conditions affecting the plume.

h. The rawin file is created by a second meteorological preprocessor (READ62)[31] based on NWS (National Weather Service) upper air data. The rawin file is used in CTDMPLUS to calculate vertical potential temperature gradients for use in estimating plume penetration in unstable conditions. The representativeness of the off-site NWS upper air data should be evaluated on a case-by-case basis.

i. In the absence of an appropriate refined model, screening results may need to be used to determine air quality impact and/or emission limits.

TABLE 5–1A.—NEUTRAL/STABLE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
σ_v (m/s)	0.3	0.75	.....	.....	.....
σ_w (m/s)	0.08	0.15	0.30	0.75	.....
$\Delta\theta/\Delta z$ (K/m)	0.01	0.02	0.035	.....	.....
WD	(Wind direction optimized internally for each meteorological combination)				

Exceptions:
(1) If $U \leq 2$ m/s and $\sigma_v \leq 0.3$ m/s, then include $\sigma_w = 0.04$ m/s.
(2) If $\sigma_w = 0.75$ m/s and $U \geq 3.0$ m/s, then $\Delta\theta/\Delta z$ is limited to ≤ 0.01 K/m.
(3) If $U \geq 4$ m/s, then $\sigma w \geq 0.15$ m/s.
(4) $\sigma_w \leq \sigma_v$

TABLE 5–1B.—UNSTABLE/CONVECTIVE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
u_* (m/s)	0.1	0.3	0.5	.....	.....
L (m)	−10	−50	−90	.....	.....
$\Delta\sigma/\Delta z$ (K/m)	0.030 (potential temperature gradient above z_i)				
z_i (m)	0.5h	1.0h	1.5h	.....	.....
	(where h = terrain height)				

6.0 Models for Ozone, Particulate Matter, Carbon Monoxide, Nitrogen Dioxide, and Lead

6.1 Discussion

a. This section identifies modeling approaches or models appropriate for addressing ozone (O_3) [1], carbon monoxide (CO), nitrogen dioxide (NO_2), particulates (PM–2.5 [a] and PM–10), and lead. These pollutants are often associated with emissions from numerous sources. Generally, mobile sources contribute significantly to emissions of these pollutants or their precursors. For cases where it is of interest to estimate concentrations of CO or NO_2 near a single or small group of stationary sources, refer to Section 4. (Modeling approaches for SO_2 are discussed in Section 4.)

b. Several of the pollutants mentioned in the preceding paragraph are closely related to each other in that they share common sources of emissions and/or are subject to chemical transformations of similar precursors.[39, 40] For example, strategies designed to reduce ozone could have an effect on the secondary component of PM–2.5 and vice versa. Thus, it makes sense to use models which take into account the chemical coupling between O_3 and PM–2.5, when feasible. This should promote consistency among methods used to evaluate strategies for reducing different pollutants as well as consistency among the strategies themselves. Regulatory requirements for the different pollutants are likely to be due at different times. Thus, the following paragraphs identify appropriate modeling approaches for pollutants individually.

c. The NAAQS for ozone was revised on July 18, 1997 and is now based on an 8-hour averaging period. Models for ozone are needed primarily to guide choice of strategies to correct an observed ozone problem in an area not attaining the NAAQS for ozone. Use of photochemical grid models is the recommended means for identifying strategies needed to correct high ozone concentrations in such areas. Such models need to consider emissions of volatile organic compounds (VOC), nitrogen oxides (NO_X) and carbon monoxide (CO), as well as means for generating meteorological data governing transport and dispersion of ozone and its precursors. Other approaches, such as Lagrangian or observational models may be used to guide choice of appropriate strategies to consider with a photochemical grid model. These other approaches may be sufficient to address ozone in an area where observed concentrations are near the NAAQS or only slightly above it. Such a decision needs to be made on a case-by-case basis in concert with the Regional Office.

d. A control agency with jurisdiction over one or more areas with significant ozone problems should review available ambient air quality data to assess whether the problem is likely to be significantly impacted by regional transport.[41] Choice of a modeling approach depends on the outcome of this review. In cases where transport is considered significant, use of a nested regional model may be the preferred approach. If the observed problem is believed to be primarily of local origin, use of a model with a single horizontal grid resolution and geographical coverage that is less than that of a regional model may suffice.

e. The fine particulate matter NAAQS, promulgated on July 18, 1997, includes particles with an aerodynamic diameter nominally less than or equal to 2.5 micrometers (PM–2.5). Models for PM–2.5 are needed to assess adequacy of a proposed strategy for meeting annual and/or 24-hour NAAQS for PM–2.5. PM–2.5 is a mixture consisting of several diverse components. Because chemical/physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on PM–2.5 is estimated from the sum of the effects on the components composing PM–2.5. Model users may refer to guidance [42] for further details concerning appropriate modeling approaches.

f. A control agency with jurisdiction over one or more areas with PM–2.5 problems should review available ambient air quality data to assess which components of PM–2.5 are likely to be major contributors to the problem. If it is determined that regional transport of secondary particulates, such as sulfates or nitrates, is likely to contribute significantly to the problem, use of a regional model may be the preferred approach. Otherwise, coverage may be limited to a domain that is urban scale or less. Special care should be taken to select appropriate geographical coverage for a modeling application.[42]

g. The NAAQS for PM–10 was promulgated in July 1987. A SIP development guide [43] is available to assist in PM–10 analyses and control strategy development. EPA promulgated regulations for PSD increments measured as PM–10 in a notice published on June 3, 1993. As an aid to assessing the impact on ambient air quality of particulate matter generated from prescribed burning activities, a reference[44] is available.

h. Models for assessing the impacts of particulate matter may involve dispersion models or receptor models, or a combination (depending on the circumstances). Receptor models focus on the behavior of the ambient environment at the point of impact as opposed to source-oriented dispersion models, which focus on the transport, diffusion, and transformation that begin at the source and continue to the receptor site. Receptor models attempt to identify and apportion sources by relating known sample compositions at receptors to measured or inferred compositions of source emissions. When complete and accurate emission inventories or meteorological characterization are unavailable, or unknown pollutant sources exist, receptor modeling may be necessary.

i. Models for assessing the impact of CO emissions are needed for a number of different purposes. Examples include evaluating effects of point sources, congested intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

j. Models for assessing the impact of sources on ambient NO_2 concentrations are primarily needed to meet new source review requirements, such as addressing the effect of a proposed source on PSD increments for annual concentrations of NO_2. Impact of an individual source on ambient NO_2 depends, in part, on the chemical environment into which the source's plume is to be emitted. There are several approaches for estimating effects of an individual source on ambient NO_2. One approach is through use of a plume-in-grid algorithm imbedded within a photochemical grid model. However, because of the rigor and complexity involved, and because this approach may not be capable of defining sub-grid concentration gradients, the plume-in-grid approach may be impractical for estimating effects on an annual PSD increment. A second approach is to develop site specific conversion factors based on measurements. If it is not possible to develop site specific conversion factors and use of the plume-in-grid algorithm is also not feasible, other screening procedures may be considered.

k. In January 1999 (40 CFR part 58, Appendix D), EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. EPA has also issued guidance on siting ambient monitors in the vicinity of such sources.[45] For lead, the SIP should contain an air quality analysis to determine the maximum quarterly lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. General guidance for lead SIP development is also available.[46]

6.2 Recommendations

6.2.1 Models for Ozone

a. *Choice of Models for Multi-source Applications.* Simulation of ozone formation and transport is a highly complex and resource intensive exercise. Control agencies with jurisdiction over areas with ozone problems are encouraged to use photochemical grid models, such as the Models-3/Community Multi-scale Air Quality (CMAQ) modeling system [47], to evaluate the relationship between precursor species and ozone. Judgement on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model and choice of episodes to model.[41] Similar models for the 8-hour NAAQS and for the 1-hour NAAQS are appropriate.

b. *Choice of Models to Complement Photochemical Grid Models.* As previously noted, observational models, Lagrangian models, or the Empirical Kinetics Modeling Approach (EKMA) [48, 49] may be used to help guide choice of strategies to simulate with a photochemical grid model and to corroborate results obtained with a grid model. Receptor models have also been used

[1] Modeling for attainment demonstrations for O_3 and PM–2.5 should be conducted in time to meet required SIP submission dates as provided for in the respective implementation rules. Information on implementation of the 8-hr O_3 and PM–2.5 standards is available at: *http://www.epa.gov/ttn/naaqs/*.

to apportion sources of ozone precursors (*e.g.*, VOC) in urban domains. EPA has issued guidance [41] in selecting appropriate techniques.

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

6.2.2 Models for Particulate Matter

6.2.2.1 PM–2.5

a. *Choice of Models for Multi-source Applications.* Simulation of phenomena resulting in high ambient PM–2.5 can be a multi-faceted and complex problem resulting from PM–2.5's existence as an aerosol mixture. Treating secondary components of PM–2.5, such as sulfates and nitrates, can be a highly complex and resource-intensive exercise. Control agencies with jurisdiction over areas with secondary PM–2.5 problems are encouraged to use models which integrate chemical and physical processes important in the formation, decay and transport of these species (*e.g.*, Models-3/CMAQ [47] or REMSAD [50]). Primary components can be simulated using less resource-intensive techniques. Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgement [42], as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model and selection of days to model.

b. *Choice of Analysis Techniques to Complement Air Quality Simulation Models.* Receptor models may be used to corroborate predictions obtained with one or more air quality simulation models. They may also be potentially useful in helping to define specific source categories contributing to major components of PM–2.5.[42]

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

6.2.2.2 PM–10

a. Screening techniques like those identified in subsection 4.2.1 are applicable to PM–10. Conservative assumptions which do not allow removal or transformation are suggested for screening. Thus, it is recommended that subjectively determined values for ''half-life'' or pollutant decay not be used as a surrogate for particle removal. Proportional models (rollback/forward) may not be applied for screening analysis, unless such techniques are used in conjunction with receptor modeling.[43]

b. Refined models such as those discussed in subsection 4.2.2 are recommended for PM–10. However, where possible, particle size, gas-to-particle formation, and their effect on ambient concentrations may be considered. For point sources of small particles and for source-specific analyses of complicated sources, use the appropriate recommended steady-state plume dispersion model (subsection 4.2.2). For guidance on determination of design concentrations, see paragraph 8.2.1.1(e).

c. Receptor models have proven useful for helping validate emission inventories and for corroborating source-specific impacts estimated by dispersion models. The Chemical Mass Balance (CMB) model is useful for apportioning impacts from localized sources.[51,52,53] Other receptor models, *e.g.*, the Positive Matrix Factorization (PMF) model [54] and Unmix [55], which don't share some of CMB's constraints, have also been applied. In regulatory applications, dispersion models have been used in conjunction with receptor models to attribute source (or source category) contributions. Guidance is available for PM–10 sampling and analysis applicable to receptor modeling.[56]

d. Under certain conditions, recommended dispersion models may not be reliable. In such circumstances, the modeling approach should be approved by the Regional Office on a case-by-case basis. Analyses involving model calculations for stagnation conditions should also be justified on a case-by-case basis (subsection 8.2.8).

e. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Reentrained dust is that which is put into the air by reason of vehicles driving over dirt roads (or dirty roads) and dusty areas. Such sources can be characterized as line, area or volume sources. Emission rates may be based on site specific data or values from the general literature. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. In some unique cases a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, it is recommended that the proposed procedure be cleared by the Regional Office for each specific situation before the modeling exercise is begun.

6.2.3 Models for Carbon Monoxide

a. Guidance is available for analyzing CO impacts at roadway intersections.[57] The recommended screening model for such analyses is CAL3QHC.[58,59] This model combines CALINE3 (listed in Appendix A) with a traffic model to calculate delays and queues that occur at signalized intersections. The screening approach is described in reference 57; a refined approach may be considered on a case-by-case basis with CAL3QHCR.[60] The latest version of the MOBILE (mobile source emission factor) model should be used for emissions input to intersection models.

b. For analyses of highways characterized by uninterrupted traffic flows, CALINE3 is recommended, with emissions input from the latest version of the MOBILE model.

c. For urban area wide analyses of CO, an Eulerian grid model should be used. Information on SIP development and requirements for using such models can be found in several references.[57,61,62,63]

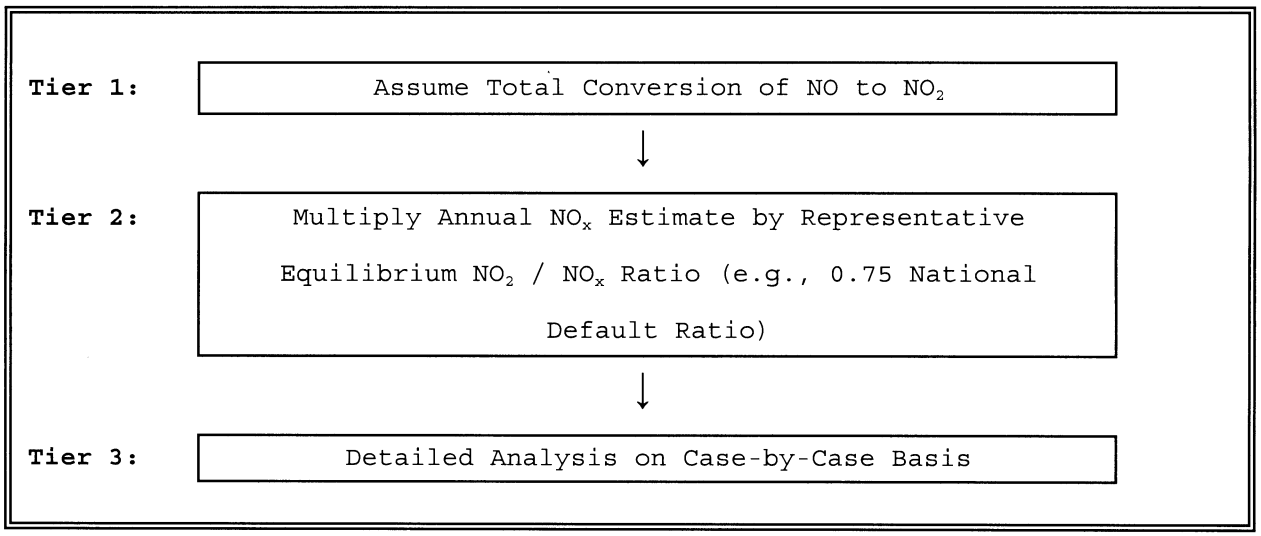
d. Where point sources of CO are of concern, they should be treated using the screening and refined techniques described in Section 4.

6.2.4 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 6–1 and described in paragraphs b through d of this subsection:

FIGURE 6-1

Multi-tiered Screening Approach for Estimating Annual NO_2 Concentrations from Point Sources



b. For Tier 1 (the initial screen), use an appropriate model in subsection 4.2.2 to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2/NO_X value of 0.75 (annual national default).[64] The reviewing agency may establish an alternative default NO_2/NO_X ratio based on ambient annual average NO_2 and annual average NO_X data representative of area wide quasi-equilibrium conditions. Alternative default NO_2/NO_X ratios should be based on data satisfying quality assurance procedures that ensure data accuracy for both NO_2 and NO_X within the typical range of measured values. In areas with relatively low NO_X concentrations, the quality assurance procedures used to determine compliance with the NO_2 national ambient air quality standard may not be adequate. In addition, default NO_2/NO_X ratios, including the 0.75 national default value, can underestimate long range NO_2 impacts and should be used with caution in long range transport scenarios.

d. For Tier 3 (3rd level) analysis, a detailed screening method may be selected on a case-by-case basis. For point source modeling, other refined screening methods, such as the ozone limiting method,[65] may also be considered. Also, a site specific NO_2/NO_X ratio may be used as a detailed screening method if it meets the same restrictions as described for alternative default NO_2/NO_X ratios. Ambient NO_X monitors used to develop a site specific ratio should be sited to obtain the NO_2 and NO_X concentrations under quasi-equilibrium conditions. Data obtained from monitors sited at the maximum NO_X impact site, as may be required in a PSD pre-construction monitoring program, likely reflect transitional NO_X conditions. Therefore, NO_X data from maximum impact sites may not be suitable for determining a site specific NO_2/NO_X ratio that is applicable for the entire modeling analysis. A site specific ratio derived from maximum impact data can only be used to estimate NO_2 impacts at receptors located within the same distance of the source as the source-to-monitor distance.

e. In urban areas (subsection 8.2.3), a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, *i.e.*, minor point, area and mobile sources of NO_X; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_X is emitted in the form of NO_2 and to use a model from Appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) Calculating the annual average concentrations of NO_X with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2/NO_X ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged alternative default annual NO_2/NO_X ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual average NO_2 / NO_X ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR Part 58, Appendix D as representative of ''neighborhood'', ''urban'', or ''regional'' scales. Furthermore, the highest annual spatially averaged NO_2/NO_X ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

f. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources using an appropriate steady-state plume dispersion model (*e.g.,* CAL3QHCR; subsection 6.2.3).

g. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the appropriate reviewing authority (paragraph 3.0(b)) should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport

and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_X problem.

6.2.5 Models for Lead

a. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)). To model an entire major urban area or to model areas without significant sources of lead emissions, as a minimum a proportional (rollback) model may be used for air quality analysis. The rollback philosophy assumes that measured pollutant concentrations are proportional to emissions. However, urban or other dispersion models are encouraged in these circumstances where the use of such models is feasible.

b. In modeling the effect of traditional line sources (such as a specific roadway or highway) on lead air quality, dispersion models applied for other pollutants can be used. Dispersion models such as CALINE3 and CAL3QHCR have been used for modeling carbon monoxide emissions from highways and intersections (subsection 6.2.3). Where there is a point source in the middle of a substantial road network, the lead concentrations that result from the road network should be treated as background (subsection 9.2); the point source and any nearby major roadways should be modeled separately using the appropriate recommended steady-state plume dispersion model (subsection 4.2.2).

7.0 Other Model Requirements

7.1 Discussion

a. This section covers those cases where specific techniques have been developed for special regulatory programs. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that. This section will undergo periodic revision as new programs are added and new techniques are developed.

b. Other Federal agencies have also developed specific modeling approaches for their own regulatory or other requirements.[66] Although such regulatory requirements and manuals may have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the manual or directive.

c. The need to estimate impacts at distances greater than 50km (the nominal distance to which EPA considers most steady-state Gaussian plume models are applicable) is an important one especially when considering the effects from secondary pollutants. Unfortunately, models originally available to EPA had not undergone sufficient field evaluation to be recommended for general use. Data bases from field studies at mesoscale and long range transport distances were limited in detail. This limitation was a result of the expense to perform the field studies required to verify and improve mesoscale and long range transport models. Meteorological data adequate for generating three-dimensional wind fields were particularly sparse. Application of models to complicated terrain compounds the difficulty of making good assessments of long range transport impacts. EPA completed limited evaluation of several long range transport (LRT) models against two sets of field data and evaluated results.[13] Based on the results, EPA concluded that long range and mesoscale transport models were limited for regulatory use to a case-by-case basis. However a more recent series of comparisons has been completed for a new model, CALPUFF (Section A.3). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed. It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.[67]

7.2 Recommendations

7.2.1 Visibility

a. Visibility in important natural areas (*e.g.,* Federal Class I areas) is protected under a number of provisions of the Clean Air Act, including Sections 169A and 169B (addressing impacts primarily from existing sources) and Section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by PM–2.5 is the most significant component of visibility impairment. The key components of PM–2.5 contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.

b. The visibility regulations as promulgated in December 1980 (40 CFR 51.300–307) require States to mitigate visibility impairment, in any of the 156 mandatory Federal Class I areas, that is found to be ''reasonably attributable'' to a single source or a small group of sources. In 1985, EPA promulgated Federal Implementation Plans (FIPs) for several States without approved visibility provisions in their SIPs. The IMPROVE (Interagency Monitoring for Protected Visual Environments) monitoring network, a cooperative effort between EPA, the States, and Federal land management agencies, was established to implement the monitoring requirements in these FIPs. Data has been collected by the IMPROVE network since 1988.

c. In 1999, EPA issued revisions to the 1980 regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.,* stationary, mobile, and area sources) located across a broad region (40 CFR 51.308–309). The state of relevant scientific knowledge has expanded significantly since the Clean Air Act Amendments of 1977. A number of studies and reports [68,69] have concluded that long range transport (*e.g.,* up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the Act requires states to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in 156 mandatory Class I federal areas. In order to develop long-term strategies to address regional haze, many States will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment (*e.g.,* light extinction and deciview metrics).

d. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions (''plume blight''), a screening model, VISCREEN, and guidance are available.[70] If a more comprehensive analysis is required, a refined model should be selected . The model selection (VISCREEN vs. PLUVUE II or some other refined model), procedures, and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected Federal Land Manager (FLM). FLMs are responsible for determining whether there is an adverse effect by a plume on a Class I area.

e. CALPUFF (Section A.3) may be applied when assessment is needed of reasonably attributable haze impairment or atmospheric deposition due to one or a small group of sources. This situation may involve more sources and larger modeling domains than that to which VISCREEN ideally may be applied. The procedures and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

f. Regional scale models are used by EPA to develop and evaluate national policy and assist State and local control agencies. Two such models which can be used to assess visibility impacts from source emissions are Models-3/CMAQ [47] and REMSAD.[50] Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)), which in this instance would include FLMs.

7.2.2 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emission limitations by 40 CFR 51.118 and 40 CFR 51.164. The definitions of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an

example of applying those techniques are found in several references [71, 72, 73, 74], which provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as H + 1.5L (see reference 73). Detailed downwash screening procedures [27] for both the cavity and wake regions should be followed. If more refined concentration estimates are required, the recommended steady-state plume dispersion model in subsection 4.2.2 contains algorithms for building wake calculations and should be used.

7.2.3 Long Range Transport (LRT) (*i.e.,* Beyond 50km)

a. Section 165(d) of the Clean Air Act requires that suspected adverse impacts on PSD Class I areas be determined. However, 50km is the useful distance to which most steady-state Gaussian plume models are considered accurate for setting emission limits. Since in many cases PSD analyses show that Class I areas may be threatened at distances greater than 50km from new sources, some procedure is needed to (1) determine if an adverse impact will occur, and (2) identify the model to be used in setting an emission limit if the Class I increments are threatened. In addition to the situations just described, there are certain applications containing a mixture of both long range and short range source-receptor relationships in a large modeled domain (*e.g.,* several industrialized areas located along a river or valley). Historically, these applications have presented considerable difficulty to an analyst if impacts from sources having transport distances greater than 50km significantly contributed to the design concentrations. To properly analyze applications of this type, a modeling approach is needed which has the capability of combining, in a consistent manner, impacts involving both short and long range transport. The CALPUFF modeling system, listed in Appendix A, has been designed to accommodate both the Class I area LRT situation and the large modeling domain situation. Given the judgement and refinement involved, conducting a LRT modeling assessment will require significant consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s). The FLM has an affirmative responsibility to protect air quality related values (AQRVs) that may be affected, and to provide the appropriate procedures and analysis techniques. Where there is no increment violation, the ultimate decision on whether a Class I area is adversely affected is the responsibility of the appropriate reviewing authority (Section 165(d)(2)(C)(ii) of the Clean Air Act), taking into consideration any information on the impacts on AQRVs provided by the FLM. According to Section 165(d)(2)(C)(iii) of the Clean Air Act, if there is a Class I increment violation, the *source* must demonstrate to the satisfaction of the FLM that the emissions from the source will have no adverse impact on the AQRVs.

b. If LRT is determined to be important, then refined estimates utilizing the CALPUFF modeling system should be obtained. A screening approach [67, 75] is also available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions. The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for refined analyses are discussed in paragraph 9.3.1.2(d). Additional information on applying this model is contained in Appendix A. To facilitate use of complex air quality and meteorological modeling systems, a written protocol approved by the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s) may be considered for developing consensus in the methods and procedures to be followed.

7.2.4 Modeling Guidance for Other Governmental Programs

a. When using the models recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal or State agency to ensure the proper application and use of the models. For modeling associated with PSD permit applications that involve a Class I area, the appropriate Federal Land Manager should be consulted on all modeling questions.

b. The Offshore and Coastal Dispersion (OCD) model, described in Appendix A, was developed by the Minerals Management Service and is recommended for estimating air quality impact from offshore sources on onshore, flat terrain areas. The OCD model is not recommended for use in air quality impact assessments for onshore sources. Sources located on or just inland of a shoreline where fumigation is expected should be treated in accordance with subsection 8.2.8.

c. The Emissions and Dispersion Modeling System (EDMS), described in Appendix A, was developed by the Federal Aviation Administration and the United States Air Force and is recommended for air quality assessment of primary pollutant impacts at airports or air bases. Regulatory application of EDMS is intended for estimating the cumulative effect of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are independent of changes in aircraft operations. If changes in other than aircraft operations are associated with analyses, a model recommended in Chapter 4 or 5 should be used.

8.0 General Modeling Considerations

8.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of this guide. The topics covered here are not specific to any one program or modeling area but are common to nearly all modeling analyses for criteria pollutants.

8.2 Recommendations

8.2.1 Design Concentrations (see also subsection 11.2.3.1)

8.2.1.1 Design Concentrations for SO_2, PM–10, CO, Pb, and NO_2

a. An air quality analysis for SO_2, PM–10, CO, Pb, and NO_2 is required to determine if the source will (1) cause a violation of the NAAQS, or (2) cause or contribute to air quality deterioration greater than the specified allowable PSD increment. For the former, background concentration (subsection 9.2) should be added to the estimated impact of the source to determine the design concentration. For the latter, the design concentration includes impact from all increment consuming sources.

b. If the air quality analyses are conducted using the period of meteorological input data recommended in subsection 9.3.1.2 (*e.g.,* 5 years of National Weather Service (NWS) data or at least 1 year of site specific data; subsection 9.3.3), then the design concentration based on the highest, second-highest short term concentration or the highest long term average, whichever is controlling, should be used to determine emission limitations to assess compliance with the NAAQS and PSD increments.

c. When sufficient and representative data exist for less than a 5-year period from a nearby NWS site, or when site specific data have been collected for less than a full continuous year, or when it has been determined that the site specific data may not be temporally representative (subsection 9.3.3), then the highest concentration estimate should be considered the design value. This is because the length of the data record may be too short to assure that the conditions producing worst-case estimates have been adequately sampled. The highest value is then a surrogate for the concentration that is not to be exceeded more than once per year (the wording of the deterministic standards). Also, the highest concentration should be used whenever selected worst-case conditions are input to a screening technique, as described in EPA guidance.[27]

d. If the controlling concentration is an annual average value and multiple years of data (site specific or NWS) are used, then the design value is the highest of the annual averages calculated for the individual years. If the controlling concentration is a quarterly average and multiple years are used, then the highest individual quarterly average should be considered the design value.

e. As long a period of record as possible should be used in making estimates to determine design values and PSD increments. If more than 1 year of site specific data is available, it should be used.

8.2.1.2 Design Concentrations for O_3 and PM–2.5

a. Guidance and specific instructions for the determination of the 1-hr and 8-hr design concentrations for ozone are provided in Appendix H and I (respectively) of reference

4. Appendix H explains how to determine when the expected number of days per calendar year with maximum hourly concentrations above the NAAQS is equal to or less than 1. Appendix I explains the data handling conventions and computations necessary for determining whether the 8-hour primary and secondary NAAQS are met at an ambient monitoring site. For PM–2.5, Appendix N of reference 4, and supplementary guidance [76], explain the data handling conventions and computations necessary for determining when the annual and 24-hour primary and secondary NAAQS are met. For all SIP revisions the user should check with the Regional Office to obtain the most recent guidance documents and policy memoranda concerning the pollutant in question. There are currently no PSD increments for O_3 and PM–2.5.

8.2.2 Critical Receptor Sites

a. Receptor sites for refined modeling should be utilized in sufficient detail to estimate the highest concentrations and possible violations of a NAAQS or a PSD increment. In designing a receptor network, the emphasis should be placed on receptor resolution and location, not total number of receptors. The selection of receptor sites should be a case-by-case determination taking into consideration the topography, the climatology, monitor sites, and the results of the initial screening procedure. For large sources (those equivalent to a 500MW power plant) and where violations of the NAAQS or PSD increment are likely, 360 receptors for a polar coordinate grid system and 400 receptors for a rectangular grid system, where the distance from the source to the farthest receptor is 10km, are usually adequate to identify areas of high concentration. Additional receptors may be needed in the high concentration location if greater resolution is indicated by terrain or source factors.

8.2.3 Dispersion Coefficients

a. Steady-state Gaussian plume models used in most applications should employ dispersion coefficients consistent with those contained in the preferred models in Appendix A. Factors such as averaging time, urban/rural surroundings (see paragraphs (b)–(f) of this subsection), and type of source (point vs. line) may dictate the selection of specific coefficients. Coefficients used in some Appendix A models are identical to, or at least based on, Pasquill-Gifford coefficients [77] in rural areas and McElroy-Pooler [78] coefficients in urban areas.[79]

b. The selection of either rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [80] and briefly described in paragraphs (c)–(f) of this subsection. These include a land use classification procedure or a population based procedure to determine whether the character of an area is primarily urban or rural.

c. Land Use Procedure: (1) Classify the land use within the total area, A_o, circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer [81]; (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

d. Population Density Procedure: (1) Compute the average population density, $\bar{p}$ per square kilometer with A_o as defined above; (2) If $\bar{p}$ is greater than 750 people/km^2, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

e. Of the two methods, the land use procedure is considered more definitive. Population density should be used with caution and should not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated, but the area is sufficiently built-up so that the urban land use criteria would be satisfied. In this case, the classification should already be ''urban'' and urban dispersion parameters should be used.

f. Sources located in an area defined as urban should be modeled using urban dispersion parameters. Sources located in areas defined as rural should be modeled using the rural dispersion parameters. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban.

g. Buoyancy-induced dispersion (BID), as identified by Pasquill [82], is included in the preferred models and should be used where buoyant sources, *e.g.*, those involving fuel combustion, are involved.

8.2.4 Stability Categories

a. The Pasquill approach to classifying stability is commonly used in preferred models (Appendix A). The Pasquill method, as modified by Turner [83], was developed for use with commonly observed meteorological data from the National Weather Service and is based on cloud cover, insolation and wind speed.

b. Procedures to determine Pasquill stability categories from other than NWS data are found in subsection 9.3. Any other method to determine Pasquill stability categories must be justified on a case-by-case basis.

c. For a given model application where stability categories are the basis for selecting dispersion coefficients, both σ_y and σ_z should be determined from the same stability category. ''Split sigmas'' in that instance are not recommended. Sector averaging, which eliminates the σ_y term, is commonly acceptable in complex terrain screening methods.

8.2.5 Plume Rise

a. The plume rise methods of Briggs [84, 85] are incorporated in many of the preferred models and are recommended for use in many modeling applications. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.[86] No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) In complex terrain screening procedures to determine close-in impacts and (2) when calculating the effects of building wakes. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs [85] is the recommended technique for this situation and is found in the point source preferred models.

8.2.6 Chemical Transformation

a. The chemical transformation of SO_2 emitted from point sources or single industrial plants in rural areas is generally assumed to be relatively unimportant to the estimation of maximum concentrations when travel time is limited to a few hours. However, in urban areas, where synergistic effects among pollutants are of considerable consequence, chemical transformation rates may be of concern. In urban area applications, a half-life of 4 hours [83] may be applied to the analysis of SO_2 emissions. Calculations of transformation coefficients from site specific studies can be used to define a ''half-life'' to be used in a steady-state Gaussian plume model with any travel time, or in any application, if appropriate documentation is provided. Such conversion factors for pollutant half-life should not be used with screening analyses.

b. Use of models incorporating complex chemical mechanisms should be considered only on a case-by-case basis with proper demonstration of applicability. These are generally regional models not designed for the evaluation of individual sources but used primarily for region-wide evaluations. Visibility models also incorporate chemical transformation mechanisms which are an integral part of the visibility model itself and should be used in visibility assessments.

8.2.7 Gravitational Settling and Deposition

a. An ''infinite half-life'' should be used for estimates of particle concentrations when steady-state Gaussian plume models containing only exponential decay terms for treating settling and deposition are used.

b. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)).

8.2.8 Complex Winds

a. *Inhomogeneous Local Winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Geographic effects are most apparent when the ambient winds are light or calm.[87] In general these geographically

induced wind circulation effects are named after the source location of the winds, *e.g.*, lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In the special cases described, the CALPUFF modeling system (described in Appendix A) may be applied on a case-by-case basis for air quality estimates in such complex non-steady-state meteorological conditions. The purpose of choosing a modeling system like CALPUFF is to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of the model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 9.3.1.2(d). Examples of inhomogeneous winds include, but aren't limited to, situations described in the following paragraphs (i)–(iii):

i. *Inversion Breakup Fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures [27] that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline Fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The Shoreline Dispersion Model (SDM) listed on EPA's Internet SCRAM Web site (subsection 2.3) may be applied on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[88] Information on the results of EPA's evaluation of this model together with other coastal fumigation models is available.[89] Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided for CALPUFF in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.2.9 Calibration of Models

a. Calibration of models is not common practice and is subject to much error and misunderstanding. There have been attempts by some to compare model estimates and measurements on an event-by-event basis and then to calibrate a model with results of that comparison. This approach is severely limited by uncertainties in both source and meteorological data and therefore it is difficult to precisely estimate the concentration at an exact location for a specific increment of time. Such uncertainties make calibration of models of questionable benefit. Therefore, model calibration is unacceptable.

9.0 Model Input Data

a. Data bases and related procedures for estimating input parameters are an integral part of the modeling procedure. The most appropriate data available should always be selected for use in modeling analyses. Concentrations can vary widely depending on the source data or meteorological data used. Input data are a major source of uncertainties in any modeling analysis. This section attempts to minimize the uncertainty associated with data base selection and use by identifying requirements for data used in modeling. A checklist of input data requirements for modeling analyses is posted on EPA's Internet SCRAM Web site (subsection 2.3). More specific data requirements and the format required for the individual models are described in detail in the users' guide for each model.

9.1 Source Data

9.1.1 Discussion

a. Sources of pollutants can be classified as point, line and area/volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles, but they may be lines of roof vents or stacks such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square.

b. Emission factors are compiled in an EPA publication commonly known as AP–42 [90]; an indication of the quality and amount of data on which many of the factors are based is also provided. Other information concerning emissions is available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

9.1.2 Recommendations

a. For point source applications the load or operating condition that causes maximum ground-level concentrations should be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the standards or PSD increments, this load [2] should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. A range of operating conditions should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling. For a steam power plant, the following (b–h) is typical of the kind of data on source characteristics and operating conditions that may be needed. Generally, input data requirements for air quality models necessitate the use of metric units; where English units are common for engineering usage, a conversion to metric is required.

b. *Plant layout.* The connection scheme between boilers and stacks, and the distance and direction between stacks, building parameters (length, width, height, location and orientation relative to stacks) for plant structures which house boilers, control equipment, and surrounding buildings within a distance of approximately five stack heights.

c. *Stack parameters.* For all stacks, the stack height and inside diameter (meters), and the temperature (K) and volume flow rate (actual cubic meters per second) or exit gas velocity (meters per second) for operation at 100 percent, 75 percent and 50 percent load.

d. *Boiler size.* For all boilers, the associated megawatts, 10^6 BTU/hr, and pounds of steam per hour, and the design and/or actual fuel consumption rate for 100 percent load for coal (tons/hour), oil (barrels/hour), and natural gas (thousand cubic feet/hour).

e. *Boiler parameters.* For all boilers, the percent excess air used, the boiler type (*e.g.*, wet bottom, cyclone, etc.), and the type of firing (*e.g.*, pulverized coal, front firing, etc.).

f. *Operating conditions.* For all boilers, the type, amount and pollutant contents of fuel, the total hours of boiler operation and the boiler capacity factor during the year, and the percent load for peak conditions.

[2] Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact.

g. *Pollution control equipment parameters.* For each boiler served and each pollutant affected, the type of emission control equipment, the year of its installation, its design efficiency and mass emission rate, the date of the last test and the tested efficiency, the number of hours of operation during the latest year, and the best engineering estimate of its projected efficiency if used in conjunction with coal combustion; data for any anticipated modifications or additions.

h. *Data for new boilers or stacks.* For all new boilers and stacks under construction and for all planned modifications to existing boilers or stacks, the scheduled date of completion, and the data or best estimates available for items (b) through (g) of this subsection following completion of construction or modification.

i. In stationary point source applications for compliance with short term ambient standards, SIP control strategies should be tested using the emission input shown on Table 9–1. When using a refined model, sources should be modeled sequentially with these loads for every hour of the year. To evaluate SIPs for compliance with quarterly and annual standards, emission input data shown in Table 9–1 should again be used. Emissions from area sources should generally be based on annual average conditions. The source input information in each model user's guide should be carefully consulted and the checklist (paragraph 9.0(a)) should also be consulted for other possible emission data that could be helpful. PSD and NAAQS compliance demonstrations should follow the emission input data shown in Table 9–2. For purposes of emissions trading, new source review and demonstrations, refer to current EPA policy and guidance to establish input data.

j. Line source modeling of streets and highways requires data on the width of the roadway and the median strip, the types and amounts of pollutant emissions, the number of lanes, the emissions from each lane and the height of emissions. The location of the ends of the straight roadway segments should be specified by appropriate grid coordinates. Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.

k. The impact of growth on emissions should be considered in all modeling analyses covering existing sources. Increases in emissions due to planned expansion or planned fuel switches should be identified. Increases in emissions at individual sources that may be associated with a general industrial/commercial/residential expansion in multi-source urban areas should also be treated. For new sources the impact of growth on emissions should generally be considered for the period prior to the start-up date for the source. Such changes in emissions should treat increased area source emissions, changes in existing point source emissions which were not subject to preconstruction review, and emissions due to sources with permits to construct that have not yet started operation.

TABLE 9–1.—MODEL EMISSION INPUT DATA FOR POINT SOURCES [1]

Averaging time	Emission limit (#/MMBtu) [2]	×	Operating level (MMBtu/hr) [2]	×	Operating factor (*e.g.*, hr/yr, hr/day)
Stationary Point Source(s) Subject to SIP Emission Limit(s) Evaluation for Compliance With Ambient Standards (Including Areawide Demonstrations)					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[4]		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]
Nearby Source(s) [6, 7] Same input requirements as for stationary point source(s) above.					
Other Sources [7] If modeled (subsection 9.2.3), input data requirements are defined below.					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[6]		Annual level when actually operating, averaged over the most recent 2 years.[3]		Actual operating factor averaged over the most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.[6]		Annual level when actually operating, averaged over the most recent 2 years.[3]		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]

[1] The model input data requirements shown on this table apply to stationary source control strategies for STATE IMPLEMENTATION PLANS. For purposes of emissions trading, new source review, or prevention of significant deterioration, other model input criteria may apply. Refer to the policy and guidance for these programs to establish the input data.

[2] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.

[3] Unless it is determined that this period is not representative.

[4] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[5] If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)

[6] *See* paragraph 9.2.3(c).

[7] *See* paragraph 9.2.3(d).

TABLE 9–2.—POINT SOURCE MODEL INPUT DATA (EMISSIONS) FOR PSD NAAQS COMPLIANCE DEMONSTRATIONS

Averaging time	Emission limit (#/MMBtu) [1] ×	Operating level (MMBtu/hr) [1] ×	Operating factor (*e.g.*, hr/yr,hr/day)
Proposed Major New or Modified Source			
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.	Design capacity or federally enforceable permit condition.	Continuous operation (*i.e.*, 8760 hours).[2]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.	Design capacity or federally enforceable permit condition.[3]	Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
Nearby Source(s) [4,6]			
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[5]	Actual or design capacity (whichever is greater), or federally enforceable permit condition.	Actual operating factor averaged over the most recent 2 years.[7,8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[5]	Actual or design capacity (whichever is greater), or federally enforceable permit condition.[3]	Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
Other Source(s) [6,9]			
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[5]	Annual level when actually operating, averaged over the most recent 2 years.[7]	Actual operating factor averaged over the most recent 2 years.[7,8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[5]	Annual level when actually operating, averaged over the most recent 2 years.[7]	Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]

[1] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.
[2] If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.
[3] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
[4] Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.
[5] *See* paragraph 9.2.3(c).
[6] *See* paragraph 9.2.3(d).
[7] Unless it is determined that this period is not representative.
[8] For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (*i.e.*, 8760) should be used.
[9] Generally, the ambient impacts from non-nearby (background) sources can be represented by air quality data unless adequate data do not exist.

9.2 Background Concentrations

9.2.1 Discussion

a. Background concentrations are an essential part of the total air quality concentration to be considered in determining source impacts. Background air quality includes pollutant concentrations due to: (1) Natural sources; (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

b. Typically, air quality data should be used to establish background concentrations in the vicinity of the source(s) under consideration. The monitoring network used for background determinations should conform to the same quality assurance and other requirements as those networks established for PSD purposes.[9][1] An appropriate data validation procedure should be applied to the data prior to use.

c. If the source is not isolated, it may be necessary to use a multi-source model to establish the impact of nearby sources. Since sources don't typically operate at their maximum allowable capacity (which may include the use of ''dirtier'' fuels), modeling is necessary to express the potential contribution of background sources, and this impact would not be captured via monitoring. Background concentrations should be determined for each critical (concentration) averaging time.

9.2.2 Recommendations (Isolated Single Source)

a. Two options (paragraph (b) or (c) of this section) are available to determine the background concentration near isolated sources.

b. Use air quality data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. Determine the mean background concentration at each monitor by excluding values when the source in question is impacting the monitor. The mean annual background is the average of the annual concentrations so determined at each monitor. For shorter averaging periods, the meteorological conditions accompanying the concentrations of concern should be identified. Concentrations for meteorological conditions of concern, at monitors not impacted by the source in question, should be averaged for each separate averaging time to determine the average background value. Monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact. One hour concentrations may be added and averaged to determine longer averaging periods.

c. If there are no monitors located in the vicinity of the source, a ''regional site'' may be used to determine background. A ''regional site'' is one that is located away from the area of interest but is impacted by similar natural and distant man-made sources.

9.2.3 Recommendations (Multi-Source Areas)

a. In multi-source areas, two components of background should be determined: Contributions from nearby sources and contributions from other sources.

b. *Nearby Sources:* All sources expected to cause a significant concentration gradient in the vicinity of the source or sources under consideration for emission limit(s) should be explicitly modeled. The number of such sources is expected to be small except in unusual situations. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define this term. Rather, identification of nearby sources calls for the exercise of professional judgement by the appropriate reviewing authority (paragraph 3.0(b)). This guidance is not intended to alter the exercise of that judgement or to comprehensively define which sources are nearby sources.

c. For compliance with the short-term and annual ambient standards, the nearby sources as well as the primary source(s) should be evaluated using an appropriate Appendix A model with the emission input data shown in Table 9–1 or 9–2. When modeling a nearby source that does not have a permit and the emission limit contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the ''maximum allowable emission limit'' for such a nearby source may be calculated as the emission rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

d. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) being modeled. Where a primary source believes that a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)) that this is, in fact, the case. Whether or not the primary source has adequately demonstrated that fact is a matter of professional judgement left to the discretion of the appropriate reviewing authority. The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled. Some sources are only used during certain seasons of the year. Those sources would not be modeled as nearby sources during times in which they do not operate. Similarly, emergency backup generators that never operate simultaneously with the sources that they back up would not be modeled as nearby sources. To reiterate, in these examples and other appropriate cases, the burden is on the primary source being modeled to make the appropriate demonstration to the satisfaction of the appropriate reviewing authority.

e. The impact of the nearby sources should be examined at locations where interactions between the plume of the point source under consideration and those of nearby sources (plus natural background) can occur. Significant locations include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. These locations may be identified through trial and error analyses.

f. *Other Sources:* That portion of the background attributable to all other sources (*e.g.*, natural sources, minor sources and distant major sources) should be determined by the procedures found in subsection 9.2.2 or by application of a model using Table 9–1 or 9–2.

9.3 Meteorological Input Data

a. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the data is dependent on: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and three dimensional meteorological fields, as described in paragraphs (c) and (d) below.

b. Model input data are normally obtained either from the National Weather Service or as part of a site specific measurement program. Local universities, Federal Aviation Administration (FAA), military stations, industry and pollution control agencies may also be sources of such data. Some recommendations for the use of each type of data are included in this subsection.

c. For long range transport modeling assessments (subsection 7.2.3) or for assessments where the transport winds are complex and the application involves a non-steady-state dispersion model (subsection 8.2.8), use of output from prognostic mesoscale meteorological models is encouraged.[92, 93, 94] Some diagnostic meteorological processors are designed to appropriately blend available NWS comparable meteorological observations, local site specific meteorological observations, and prognostic mesoscale meteorological data, using empirical relationships, to diagnostically adjust the wind field for mesoscale and local-scale effects. These diagnostic adjustments can sometimes be improved through the use of strategically placed site specific meteorological observations. The placement of these special meteorological observations (often more than one location is needed) involves expert judgement, and is specific to the terrain and land use of the modeling domain. Acceptance for use of output from prognostic mesoscale meteorological models is contingent on concurrence by the appropriate reviewing authorities (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with observations of winds aloft and at the surface at several appropriate locations.

9.3.1 Length of Record of Meteorological Data

9.3.1.1 Discussion

a. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The trend toward statistically based standards suggests a need for all meteorological conditions to be adequately represented in the data set selected for model input. The number of years of record needed to obtain a stable distribution of conditions depends on the variable being measured and has been estimated by Landsberg and Jacobs [95] for various parameters. Although that study indicates in excess of 10 years may be required to achieve stability in the frequency distributions of some meteorological variables, such long periods are not reasonable for model input data. This is due in part to the fact that hourly data in model input format are frequently not available for such periods and that hourly calculations of concentration for long periods may be prohibitively expensive. Another study [96] compared various periods from a 17-year data set to determine the minimum number of years of data needed to approximate the concentrations modeled with a 17-year period of meteorological data from one station. This study indicated that the variability of model estimates due to the meteorological data input was adequately reduced if a 5-year period of record of meteorological input was used.

9.3.1.2 Recommendations

a. Five years of representative meteorological data should be used when estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. The meteorological data should be *adequately representative,* and may be site specific or from a nearby NWS station. Where professional judgment indicates NWS-collected ASOS (automated surface observing stations) data are inadequate {for cloud cover observations, the most recent 5 years of NWS data that are observer-based may be considered for use.

b. The use of 5 years of NWS meteorological data or at least l year of site specific data is required. If one year or more

(including partial years), up to five years, of site specific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in subsection 9.3.3.2.

c. For permitted sources whose emission limitations are based on a specific year of meteorological data, that year should be added to any longer period being used (*e.g.*, 5 years of NWS data) when modeling the facility at a later time.

d. For LRT situations (subsection 7.2.3) and for complex wind situations (paragraph 8.2.8(a)), if only NWS or comparable standard meteorological observations are employed, five years of meteorological data (within and near the modeling domain) should be used. Consecutive years from the most recent, readily available 5-year period are preferred. Less than five, but at least three, years of meteorological data (need not be consecutive) may be used if mesoscale meteorological fields are available, as discussed in paragraph 9.3(c). These mesoscale meteorological fields should be used in conjunction with available standard NWS or comparable meteorological observations within and near the modeling domain. If site specific meteorological data are available, these data may be especially helpful for local-scale complex wind situations, when appropriately blended together with standard NWS or comparable observations and mesoscale meteorological fields.

9.3.2 National Weather Service Data

9.3.2.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative. However, there are many model applications where NWS data are adequately representative, and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Climatic Data Center (NCDC). These observations are then preprocessed before they can be used in the models.

9.3.2.2 Recommendations

a. The preferred models listed in Appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a particular modeling application, they may be used. NCDC makes available surface [97,98] and upper air [99] meteorological data in CD–ROM format.

b. Although most NWS measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred model.

c. Wind directions observed by the National Weather Service are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used with NWS data to ensure a lack of bias in wind direction assignments within the models.

d. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail to the NWS data, and they are judged to be adequately representative for the particular application.

9.3.3 Site Specific Data

9.3.3.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site specific measured data are therefore preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site specific measurements are frequently made ''on-property'' (*i.e.*, on the source's premises), acquisition of adequately representative site specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site specific measurements, technical guidance [100] is available. Site specific data should always be reviewed for representativeness and consistency by a qualified meteorologist.

9.3.3.2 Recommendations

a. EPA guidance[100] provides recommendations on the collection and use of site specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.[91,101,102] Detailed information on quality assurance is also available.[103] As a minimum, site specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

b. All site specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

c. *Missing Data Substitution.* After valid data retrieval requirements have been met [100], hours in the record having missing data should be treated according to an established data substitution protocol provided that data from an adequately representative alternative site are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in Section 5.3 of reference 100. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

d. *Solar Radiation Measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer, sited and operated in accordance with established site specific meteorological guidance.[100,103]

e. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site specific meteorological guidance.[100]

f. *Temperature Difference Measurements.* Temperature difference (δT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of δT systems should be based on guidance found in Chapter 3 of reference 100, and such guidance should be followed when obtaining vertical temperature gradient data.

g. *Winds Aloft.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is required. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.*, acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. (For specific requirements for CTDMPLUS, see Appendix A.) Specifications for wind measuring instruments and systems are contained in reference 100.

h. *Turbulence.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (*e.g.*, CTDMPLUS and CALPUFF). For specific requirements for CTDMPLUS and CALPUFF, see Appendix A. For technical guidance on measurement and processing of turbulence parameters, see reference 100. When turbulence data are used in this manner to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be one hour

(Table 9–3). There are other dispersion models (*e.g.*, BLP, and CALINE3) that employ P–G stability categories for the characterization of the vertical and lateral dispersion. Methods for using site specific turbulence data for the characterization of P–G stability categories are discussed in reference 100. When turbulence data are used in this manner to determine the P–G stability category, the averaging time for the turbulence measurements should be 15 minutes.

i. *Stability Categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion (*e.g.*, ISC3), the P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[77] It is recommended that the P–G stability category be estimated using the Turner method with site specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site specific cloud observations are unavailable, may be found in Section 6 of reference 100. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (*i.e.*, the σ_E and σ_A methods) may be used.

j. The SRDT method, described in Section 6.4.4.2 of reference 100, is modified slightly from that published from earlier work [104] and has been evaluated with three site specific data bases.[105] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in Section 6.4.4 of reference 100 (note applicable tables in Section 6). For additional information on the wind fluctuation methods, several references are available.[106,107,108,109,]

k. *Meteorological Data Preprocessors.* The following meteorological preprocessors are recommended by EPA: PCRAMMET,[110] MPRM,[111] METPRO,[112] and CALMET.[113] PCRAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring PCRAMMET formatted (NWS) data. MPRM is available for use in applications employing site specific meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. CALMET is available for use with applications of CALPUFF. All of the above mentioned data preprocessors are available for downloading from EPA's Internet SCRAM Web site (subsection 2.3).

TABLE 9–3.—AVERAGING TIMES FOR SITE SPECIFIC WIND AND TURBULENCE MEASUREMENTS

Parameter	Averaging time (in hours)
Surface wind speed (for use in stability determinations)	1
Transport direction	1
Dilution wind speed	1
Turbulence measurements (σ_E and σ_A) for use in stability determinations	[1] 1
Turbulence Measurements for direct input to dispersion models	1

[1] To minimize meander effects in σ_A when wind conditions are light and/or variable, determine the hourly average σ value from four sequential 15-minute σ's according to the following formula:

$$\sigma_{1\text{-hr}} = \sqrt{\frac{\sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2}{4}}$$

9.3.4 Treatment of Near-calms and Calms

9.3.4.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in model applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed. Furthermore, concentrations may become unrealistically large when wind speeds less than l m/s are input to the model. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours which are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended.

9.3.4.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. For models listed in Appendix A, a post-processor computer program, CALMPRO [114] has been prepared, is available on the SCRAM Internet Web site (subsection 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (see also subsection 8.2.8).

c. When used in steady-state Gaussian plume models, measured site specific wind speeds of less than l m/s but higher than the response threshold of the instrument should be input as l m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

10.0 Accuracy and Uncertainty of Models

10.1 Discussion

a. Increasing reliance has been placed on concentration estimates from models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed source, no practical alternative exists. Therefore, there is an obvious need to know how accurate models really are and how any uncertainty in the estimates affects regulatory decisions. During the 1980's, attempts were made to encourage development of standardized evaluation methods.[16,115] EPA recognized the need for incorporating such information and has sponsored workshops [116] on model accuracy, the possible ways to quantify accuracy, and on considerations in the incorporation of model accuracy and uncertainty in the regulatory process. The Second (EPA) Conference on Air Quality Modeling, August 1982,[117] was devoted to that subject.

b. To better deduce the statistical significance of differences seen in model performance in the face of unaccounted for uncertainties and variations, investigators have more recently explored the use of bootstrap techniques.[118,119] Work is underway to develop a new generation of evaluation metrics [24] that takes into account the statistical differences (in error distributions) between model predictions and observations.[120] Even though the procedures and measures are still evolving to describe performance of models that characterize atmospheric fate, transport and diffusion [121, 122, 123] there has been general acceptance of a need to address the uncertainties inherent in atmospheric processes.

10.1.1 Overview of Model Uncertainty

a. Dispersion models generally attempt to estimate concentrations at specific sites that really represent an ensemble average of numerous repetitions of the same event.[24] The event is characterized by measured or

''known'' conditions that are input to the models, *e.g.*, wind speed, mixed layer height, surface heat flux, emission characteristics, etc. However, in addition to the known conditions, there are unmeasured or unknown variations in the conditions of this event, *e.g.*, unresolved details of the atmospheric flow such as the turbulent velocity field. These unknown conditions, may vary among repetitions of the event. As a result, deviations in observed concentrations from their ensemble average, and from the concentrations estimated by the model, are likely to occur even though the known conditions are fixed. Even with a *perfect model* that predicts the correct ensemble average, there are likely to be deviations from the observed concentrations in individual repetitions of the event, due to variations in the unknown conditions. The statistics of these concentration residuals are termed ''inherent'' uncertainty. Available evidence suggests that this source of uncertainty alone may be responsible for a typical range of variation in concentrations of as much as ±50 percent.[124]

b. Moreover, there is ''reducible'' uncertainty [115] associated with the model and its input conditions; neither models nor data bases are perfect. Reducible uncertainties are caused by: (1) Uncertainties in the input values of the known conditions (*i.e.*, emission characteristics and meteorological data); (2) errors in the measured concentrations which are used to compute the concentration residuals; and (3) inadequate model physics and formulation. The ''reducible'' uncertainties can be minimized through better (more accurate and more representative) measurements and better model physics.

c. To use the terminology correctly, reference to model accuracy should be limited to that portion of reducible uncertainty which deals with the physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[125] The statement of accuracy is based on statistical tests or performance measures such as bias, noise, correlation, etc.[16] However, information that allows a distinction between contributions of the various elements of inherent and reducible uncertainty is only now beginning to emerge.[24] As a result most discussions of the accuracy of models make no quantitative distinction between (1) limitations of the model versus (2) limitations of the data base and of knowledge concerning atmospheric variability. The reader should be aware that statements on model accuracy and uncertainty may imply the need for improvements in model performance that even the ''perfect'' model could not satisfy.

10.1.2 Studies of Model Accuracy

a. A number of studies[126,127] have been conducted to examine model accuracy, particularly with respect to the reliability of short-term concentrations required for ambient standard and increment evaluations. The results of these studies are not surprising. Basically, they confirm what expert atmospheric scientists have said for some time: (1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of ±10 to 40 percent are found to be typical [128,129], *i.e.*, certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable.

b. As noted above, poor correlations between paired concentrations at fixed stations may be due to ''reducible'' uncertainties in knowledge of the precise plume location and to unquantified inherent uncertainties. For example, Pasquill [130] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Uncertainty of five to 10 degrees in the measured wind direction, which transports the plume, can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt.

10.1.3 Use of Uncertainty in Decision-Making

a. The accuracy of model estimates varies with the model used, the type of application, and site specific characteristics. Thus, it is desirable to quantify the accuracy or uncertainty associated with concentration estimates used in decision-making. Communications between modelers and decision-makers must be fostered and further developed. Communications concerning concentration estimates currently exist in most cases, but the communications dealing with the accuracy of models and its meaning to the decision-maker are limited by the lack of a technical basis for quantifying and directly including uncertainty in decisions. Procedures for quantifying and interpreting uncertainty in the practical application of such concepts are only beginning to evolve; much study is still required.[115,116,117,131,132]

b. In all applications of models an effort is encouraged to identify the reliability of the model estimates for that particular area and to determine the magnitude and sources of error associated with the use of the model. The analyst is responsible for recognizing and quantifying limitations in the accuracy, precision and sensitivity of the procedure. Information that might be useful to the decision-maker in recognizing the seriousness of potential air quality violations includes such model accuracy estimates as accuracy of peak predictions, bias, noise, correlation, frequency distribution, spatial extent of high concentration, etc. Both space/time pairing of estimates and measurements and unpaired comparisons are recommended. Emphasis should be on the highest concentrations and the averaging times of the standards or increments of concern. Where possible, confidence intervals about the statistical values should be provided. However, while such information can be provided by the modeler to the decision-maker, it is unclear how this information should be used to make an air pollution control decision. Given a range of possible outcomes, it is easiest and tends to ensure consistency if the decision-maker confines his judgement to use of the ''best estimate'' provided by the modeler (*i.e.*, the design concentration estimated by a model recommended in the *Guideline* or an alternate model of known accuracy). This is an indication of the practical limitations imposed by current abilities of the technical community.

c. To improve the basis for decision-making, EPA has developed and is continuing to study procedures for determining the accuracy of models, quantifying the uncertainty, and expressing confidence levels in decisions that are made concerning emissions controls.[133,134] However, work in this area involves ''breaking new ground'' with slow and sporadic progress likely. As a result, it may be necessary to continue using the ''best estimate'' until sufficient technical progress has been made to meaningfully implement such concepts dealing with uncertainty.

10.1.4 Evaluation of Models

a. A number of actions have been taken to ensure that the best model is used correctly for each regulatory application and that a model is not arbitrarily imposed. First, the *Guideline* clearly recommends the most appropriate model be used in each case. Preferred models, based on a number of factors, are identified for many uses. General guidance on using alternatives to the preferred models is also provided. Second, the models have been subjected to a systematic performance evaluation and a peer scientific review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as recommended by the AMS Woods Hole Workshop [16], were generally followed. Third, more specific information has been provided for justifying the site specific use of alternative models in previously cited EPA guidance [22,25], and new models are under consideration and review.[24] Together these documents provide methods that allow a judgement to be made as to what models are most appropriate for a specific application. For the present, performance and the theoretical evaluation of models are being used as an indirect means to quantify one element of uncertainty in air pollution regulatory decisions.

b. EPA has participated in a series of conferences entitled, ''Harmonisation within Atmospheric Dispersion Modelling for Regulatory Purposes.'' [135] for the purpose of promoting the development of improved methods for the characterization of model performance. There is a consensus developing on what should be considered in the evaluation of air quality models [136],

namely quality assurance planning, documentation and scrutiny should be consistent with the intended use, and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity and uncertainty analyses);
- Diagnostic and performance evaluations with data obtained in trial locations, and
- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community. Performance evaluations allow us to decide how well the model simulates the average temporal and spatial patterns seen in the observations, and employ large spatial/temporal scale data sets (*e.g.*, national data sets). Performance evaluations also allow determination of relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale date sets (*e.g.*, field studies). Diagnostic evaluations allow us to decide if we get the right answer for the right reason. The objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation data sets, there are severe practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

c. To extend information from diagnostic and performance evaluations, sensitivity and uncertainty analyses are encouraged since they can provide additional information on the effect of inaccuracies in the data bases and on the uncertainty in model estimates. Sensitivity analyses can aid in determining the effect of inaccuracies of variations or uncertainties in the data bases on the range of likely concentrations. Uncertainty analyses can aid in determining the range of likely concentration values, resulting from uncertainties in the model inputs, the model formulations, and parameterizations. Such information may be used to determine source impact and to evaluate control strategies. Where possible, information from such sensitivity analyses should be made available to the decision-maker with an appropriate interpretation of the effect on the critical concentrations.

10.2 Recommendations

a. No specific guidance on the quantification of model uncertainty for use in decision-making is being given at this time. As procedures for considering uncertainty develop and become implementable, this guidance will be changed and expanded. For the present, continued use of the ''best estimate'' is acceptable; however, in specific circumstances for O_3, PM–2.5 and regional haze, additional information and/or procedures may be appropriate.[41,42]

11.0 Regulatory Application of Models

11.1 Discussion

a. Procedures with respect to the review and analysis of air quality modeling and data analyses in support of SIP revisions, PSD permitting or other regulatory requirements need a certain amount of standardization to ensure consistency in the depth and comprehensiveness of both the review and the analysis itself. This section recommends procedures that permit some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application.

b. Dispersion model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. Nevertheless, there are instances where the performance of recommended dispersion modeling techniques, by comparison with observed air quality data, may be shown to be less than acceptable. Also, there may be no recommended modeling procedure suitable for the situation. In these instances, emission limitations may be established solely on the basis of observed air quality data as would be applied to a modeling analysis. The same care should be given to the analyses of the air quality data as would be applied to a modeling analysis.

c. The current NAAQS for SO_2 and CO are both stated in terms of a concentration not to be exceeded more than once a year. There is only an annual standard for NO_2 and a quarterly standard for Pb. Standards for fine particulate matter (PM–2.5) are expressed in terms of both long-term (annual) and short-term (daily) averages. The long-term standard is calculated using the three year average of the annual averages while the short-term standard is calculated using the three year average of the 98th percentile of the daily average concentration. For PM–10, the convention is to compare the arithmetic mean, averaged over 3 consecutive years, with the concentration specified in the NAAQS (50 $\mu g/m^3$). The 24-hour NAAQS (150 $\mu g/m^3$) is met if, over a 3-year period, there is (on average) no more than one exceedance per year. For ozone the short term 1-hour standard is expressed in terms of an expected exceedance limit while the short term 8-hour standard is expressed in terms of a three year average of the annual fourth highest daily maximum 8-hour value. The NAAQS are subjected to extensive review and possible revision every 5 years.

d. This section discusses general requirements for concentration estimates and identifies the relationship to emission limits. The following recommendations apply to: (1) Revisions of State Implementation Plans and (2) the review of new sources and the prevention of significant deterioration (PSD).

11.2 Recommendations

11.2.1 Analysis Requirements

a. Every effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data. An example of requirements for such an effort is contained in the Air Quality Analysis Checklist posted on EPA's Internet SCRAM Web site (subsection 2.3). This checklist suggests the level of detail required to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this preapplication meeting. The protocol should be written and agreed upon by the parties concerned, although a formal legal document is not intended. Changes in such a protocol are often required as the data collection and analysis progresses. However, the protocol establishes a common understanding of the requirements.

b. An air quality analysis should begin with a screening model to determine the potential of the proposed source or control strategy to violate the PSD increment or NAAQS. For traditional stationary sources, EPA guidance[27] should be followed. Guidance is also available for mobile sources.[57]

c. If the concentration estimates from screening techniques indicate that the PSD increment or NAAQS may be approached or exceeded, then a more refined modeling analysis is appropriate and the model user should select a model according to recommendations in Sections 4–8. In some instances, no refined technique may be specified in this guide for the situation. The model user is then encouraged to submit a model developed specifically for the case at hand. If that is not possible, a screening technique may supply the needed results.

d. Regional Offices should require permit applicants to incorporate the pollutant contributions of all sources into their analysis. Where necessary this may include emissions associated with growth in the area of impact of the new or modified source. PSD air quality assessments should consider the amount of the allowable air quality increment that has already been consumed by other sources. Therefore, the most recent source applicant should model the existing or permitted sources in addition to the one currently under consideration. This would permit the use of newly acquired data or improved modeling techniques if such have become available since the last source was permitted. When remodeling, the worst case used in the previous modeling analysis should be one set of conditions modeled in the new analysis. All sources should be modeled for each set of meteorological conditions selected.

11.2.2 Use of Measured Data in Lieu of Model Estimates

a. Modeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient. Monitoring will normally not be accepted as the sole basis for emission limitation. In some instances when the modeling technique

available is only a screening technique, the addition of air quality data to the analysis may lend credence to model results.

b. There are circumstances where there is no applicable model, and measured data may need to be used. However, only in the case of an existing source should monitoring data alone be a basis for emission limits. In addition, the following items (i–vi) should be considered prior to the acceptance of the measured data:

i. Does a monitoring network exist for the pollutants and averaging times of concern?

ii. Has the monitoring network been designed to locate points of maximum concentration?

iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?

iv. Do the data set and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?

v. Is at least one full year of valid ambient data available?

vi. Can it be demonstrated through the comparison of monitored data with model results that available models are not applicable?

c. The number of monitors required is a function of the problem being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and placement of monitors. Decisions can only be made on a case-by-case basis. Guidance is available for establishing criteria for demonstrating that a model is not applicable.[22]

d. Sources should obtain approval from the appropriate reviewing authority (paragraph 3.0(b)) for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all concerned parties is highly desirable. The design of the network, the number, type and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

11.2.3 Emission Limits

11.2.3.1 Design Concentrations

a. Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. The concentration used in specifying emission limits is called the design value or design concentration and is a sum of the concentration contributed by the source and the background concentration.

b. To determine the averaging time for the design value, the most restrictive NAAQS should be identified by calculating, for each averaging time, the ratio of the difference between the applicable NAAQS (S) and the background concentration (B) to the (model) predicted concentration (P) (*i.e.*, (S–B)/P). The averaging time with the lowest ratio identifies the most restrictive standard. If the annual average is the most restrictive, the highest estimated annual average concentration from one or a number of years of data is the design value. When short term standards are most restrictive, it may be necessary to consider a broader range of concentrations than the highest value. For example, for pollutants such as SO_2, the highest, second-highest concentration is the design value. For pollutants with statistically based NAAQS, the design value is found by determining the more restrictive of: (1) The short-term concentration over the period specified in the standard, or (2) the long-term concentration that is not expected to exceed the long-term NAAQS. Determination of design values for PM–10 is presented in more detail in EPA guidance.[43]

11.2.3.2 NAAQS Analyses for New or Modified Sources

a. For new or modified sources predicted to have a significant ambient impact[91] and to be located in areas designated attainment or unclassifiable for the SO_2, Pb, NO_2, or CO NAAQS, the demonstration as to whether the source will cause or contribute to an air quality violation should be based on: (1) The highest estimated annual average concentration determined from annual averages of individual years; or (2) the highest, second-highest estimated concentration for averaging times of 24-hours or less; and (3) the significance of the spatial and temporal contribution to any modeled violation. For Pb, the highest estimated concentration based on an individual calendar quarter averaging period should be used. Background concentrations should be added to the estimated impact of the source. The most restrictive standard should be used in all cases to assess the threat of an air quality violation. For new or modified sources predicted to have a significant ambient impact[91] in areas designated attainment or unclassifiable for the PM–10 NAAQS, the demonstration of whether or not the source will cause or contribute to an air quality violation should be based on sufficient data to show whether: (1) The projected 24-hour average concentrations will exceed the 24-hour NAAQS more than 1 percent of the time, on average ; (2) the expected (*i.e.*, average) annual mean concentration will exceed the annual NAAQS; and (3) the source contributes significantly, in a temporal and spatial sense, to any modeled violation.

11.2.3.3 PSD Air Quality Increments and Impacts

a. The allowable PSD increments for criteria pollutants are established by regulation and cited in 40 CFR 51.166. These maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, except for the annual increment that may not be exceeded. The highest, second-highest increase in estimated concentrations for the short term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

b. Screening techniques defined in subsection 4.1 can sometimes be used to estimate short term incremental concentrations for the first new source that triggers the baseline in a given area. However, when multiple increment-consuming sources are involved in the calculation, the use of a refined model with at least 1 year of site specific or 5 years of (off-site) NWS data is normally required (subsection 9.3.1.2). In such cases, sequential modeling must demonstrate that the allowable increments are not exceeded temporally and spatially, *i.e.*, for all receptors for each time period throughout the year(s) (time period means the appropriate PSD averaging time, *e.g.*, 3-hour, 24-hour, etc.).

c. The PSD regulations require an estimation of the SO_2, particulate matter (PM–10), and NO_2 impact on any Class I area. Normally, steady-state Gaussian plume models should not be applied at distances greater than can be accommodated by the steady state assumptions inherent in such models. The maximum distance for refined steady-state Gaussian plume model application for regulatory purposes is generally considered to be 50km. Beyond the 50km range, screening techniques may be used to determine if more refined modeling is needed. If refined models are needed, long range transport models should be considered in accordance with subsection 7.2.3. As previously noted in Sections 3 and 7, the need to involve the Federal Land Manager in decisions on potential air quality impacts, particularly in relation to PSD Class I areas, cannot be overemphasized.

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A. Ref References

A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) With the exception of EDMS, codes and documentation for all models listed in this appendix are available from EPA's Support Center for Regulatory Air Models (SCRAM) Web site at *http://www.epa.gov/scram001.* Documentation is also available from the National Technical Information Service (NTIS), *http://www.ntis.gov* or U.S. Department of Commerce, Springfield, VA 22161; phone: (800) 553–6847. Where possible, accession numbers are provided.

A.1 Buoyant Line and Point Source Dispersion Model (BLP)

Reference

Schulman, Lloyd L. and Joseph S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide. Document P–7304B. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 81–164642)

Availability

The computer code is available on EPA's Internet SCRAM website and also on diskette (as PB 2002–500051) from the National Technical Information Service (see Section A.0).

Abstract

BLP is a Gaussian plume dispersion model designed to handle unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary line sources are important.

a. Recommendations for Regulatory Use

(1) The BLP model is appropriate for the following applications:

- Aluminum reduction plants which contain buoyant, elevated line sources;
- Rural areas;
- Transport distances less than 50 kilometers;
- Simple terrain; and
- One hour to one year averaging times.

(2) The following options should be selected for regulatory applications:

(i) Rural (IRU=1) mixing height option;

(ii) Default (no selection) for plume rise wind shear (LSHEAR), transitional point source plume rise (LTRANS), vertical potential temperature gradient (DTHTA), vertical wind speed power law profile exponents (PEXP), maximum variation in number of stability classes per hour (IDELS), pollutant decay (DECFAC), the constant in Briggs' stable plume rise equation (CONST2), constant in Briggs' neutral plume rise equation (CONST3), convergence criterion for the line source calculations (CRIT), and maximum iterations allowed for line source calculations (MAXIT); and

(iii) Terrain option (TERAN) set equal to 0.0, 0.0, 0.0, 0.0, 0.0, 0.0

(3) For other applications, BLP can be used if it can be demonstrated to give the same estimates as a recommended model for the same application, and will subsequently be executed in that mode.

(4) BLP can be used on a case-by-case basis with specific options not available in a recommended model if it can be demonstrated, using the criteria in Section 3.2, that the model is more appropriate for a specific application.

b. Input Requirements

(1) Source data: point sources require stack location, elevation of stack base, physical stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, and pollutant emission rate. Line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter.

(2) Meteorological data: Hourly surface weather data from punched cards or from the preprocessor program PCRAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

(3) Receptor data: Locations and elevations of receptors, or location and size of receptor grid or request automatically generated receptor grid.

c. Output

(1) Printed output (from a separate post-processor program) includes:

(2) Total concentration or, optionally, source contribution analysis; monthly and annual frequency distributions for 1-, 3-, and 24-hour average concentrations; tables of 1-, 3-, and 24-hour average concentrations at each receptor; table of the annual (or length of run) average concentrations at each receptor;

(3) Five highest 1-, 3-, and 24-hour average concentrations at each receptor; and

(4) Fifty highest 1-, 3-, and 24-hour concentrations over the receptor field.

d. Type of Model

BLP is a gaussian plume model.

e. Pollutant Types

BLP may be used to model primary pollutants. This model does not treat settling and deposition.

f. Source-Receptor Relationship

(1) BLP treats up to 50 point sources, 10 parallel line sources, and 100 receptors arbitrarily located.

(2) User-input topographic elevation is applied for each stack and each receptor.

g. Plume Behavior

(1) BLP uses plume rise formulas of Schulman and Scire (1980).

(2) Vertical potential temperature gradients of 0.02 Kelvin per meter for E stability and 0.035 Kelvin per meter are used for stable plume rise calculations. An option for user input values is included.

(3) Transitional rise is used for line sources.

(4) Option to suppress the use of transitional plume rise for point sources is included.

(5) The building downwash algorithm of Schulman and Scire (1980) is used.

h. Horizontal Winds

(1) Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

(2) Wind speeds profile exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 are used for stability classes A through F, respectively. An option for user—defined values and an option to suppress the use of the wind speed profile feature are included.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness or averaging time.

(2) Six stability classes are used.

k. Vertical Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness.

(2) Six stability classes are used.

(3) Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

(4) Perfect reflection at the ground is assumed.

l. Chemical Transformation

Chemical transformations are treated using linear decay. Decay rate is input by the user.

m. Physical Removal

Physical removal is not explicitly treated.

n. Evaluation Studies

Schulman, L.L. and J.S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide, P–7304B. Environmental Research and Technology, Inc., Concord, MA.

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. APCA Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

A.2 CALINE3

Reference

Benson, Paul E, 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC. (NTIS No. PB 80–220841)

Availability

The CALINE3 model is available on diskette (as PB 95–502712) from NTIS. The source code and user's guide are also available on EPA's Internet SCRAM Web site (Section A.0).

Abstract

CALINE3 can be used to estimate the concentrations of nonreactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of ''at-grade,'' ''fill,'' ''bridge,'' and ''cut section'' highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model has adjustments for averaging time and surface roughness, and can handle up to 20 links and 20 receptors. It also contains an algorithm for deposition and settling velocity so that particulate concentrations can be predicted.

a. Recommendations for Regulatory Use

CALINE–3 is appropriate for the following applications:

- Highway (line) sources;
- Urban or rural areas;
- Simple terrain;
- Transport distances less than 50 kilometers; and
- One-hour to 24-hour averaging times.

b. Input Requirements

(1) Source data: Up to 20 highway links classed as ''at-grade,'' ''fill'' ''bridge,'' or ''depressed''; coordinates of link end points; traffic volume; emission factor; source height; and mixing zone width.

(2) Meteorological data: Wind speed, wind angle (measured in degrees clockwise from the Y axis), stability class, mixing height, ambient (background to the highway) concentration of pollutant.

(3) Receptor data: Coordinates and height above ground for each receptor.

c. Output

Printed output includes concentration at each receptor for the specified meteorological condition.

d. Type of Model

CALINE–3 is a Gaussian plume model.

e. Pollutant Types

CALINE–3 may be used to model primary pollutants.

f. Source-Receptor Relationship

(1) Up to 20 highway links are treated.

(2) CALINE–3 applies user input location and emission rate for each link. User-input receptor locations are applied.

g. Plume Behavior

Plume rise is not treated.

h. Horizontal Winds

(1) User-input hourly wind speed and direction are applied.

(2) Constant, uniform (steady-state) wind is assumed for an hour.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Six stability classes are used.

(2) Rural dispersion coefficients from Turner (1969) are used, with adjustment for roughness length and averaging time.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

k. Vertical Dispersion

(1) Six stability classes are used.

(2) Empirical dispersion coefficients from Benson (1979) are used including an adjustment for roughness length.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

(4) Adjustment for averaging time is included.

l. Chemical Transformation

Not treated.

m. Physical Removal

Optional deposition calculations are included.

n. Evaluation Studies

Bemis, G.R. *et al.*, 1977. Air Pollution and Roadway Location, Design, and Operation—Project Overview. FHWA–CA–TL–7080–77–25, Federal Highway Administration, Washington, D.C.

Cadle, S.H. *et al.*, 1976. Results of the General Motors Sulfate Dispersion Experiment, GMR–2107. General Motors Research Laboratories, Warren, MI.

Dabberdt, W.F., 1975. Studies of Air Quality on and Near Highways, Project 2761. Stanford Research Institute, Menlo Park, CA.

A.3 CALPUFF

References

Scire, J.S., D.G. Strimaitis and R.J. Yamartino, 2000. A User's Guide for the CALPUFF Dispersion Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Scire J.S., F.R. Robe, M.E. Fernau and R.J. Yamartino, 2000. A User's Guide for the CALMET Meteorological Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Availability

The model code and its documentation are available at no cost for download from the model developers' Internet Web site: *http://www.src.com/calpuff/calpuff1.htm.* You may also contact Joseph Scire, Earth Tech, Inc., 196 Baker Avenue, Concord, MA 01742; Telephone: (978) 371–4200, Fax: (978) 371–2468, e-mail: *jss@src.com.*

Abstract

CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use on scales from tens of meters from a source to hundreds of kilometers. It includes algorithms for near-field effects such as building downwash, transitional buoyant and momentum plume rise, partial plume penetration, subgrid scale terrain and coastal interactions effects, and terrain impingement as well as longer range effects such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, vertical wind shear, overwater transport, plume fumigation, and visibility effects of particulate matter concentrations.

a. Recommendations for Regulatory Use

(1) CALPUFF is appropriate for long range transport (source-receptor distances of 50 to several hundred kilometers) of emissions from point, volume, area, and line sources. The meteorological input data should be fully characterized with time-and-space-varying three dimensional wind and meteorological conditions using CALMET, as discussed in paragraphs 9.3(c) and 9.3.1.2(d) of Appendix W.

(2) CALPUFF may also be used on a case-by-case basis if it can be demonstrated using the criteria in Section 3.2 that the model is more appropriate for the specific application. The purpose of choosing a modeling system like CALPUFF is to fully treat stagnation, wind reversals, and time and space variations of meteorology effects on transport and dispersion, as discussed in paragraph 8.2.8(a).

(3) For regulatory applications of CALMET and CALPUFF, the regulatory default option should be used. Inevitably, some of the model control options will have to be set specific for the application using expert judgement and in consultation with the relevant reviewing authorities.

b. Input Requirements

Source Data:

1. Point sources: Source location, stack height, diameter, exit velocity, exit temperature, base elevation, wind direction specific building dimensions (for building downwash calculations), and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent

emission factors) may also be entered. Arbitrarily-varying point source parameters may be entered from an external file.

2. Area sources: Source location and shape, release height, base elevation, initial vertical distribution (σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying area source parameters may be entered from an external file. Area sources specified in the external file are allowed to be buoyant and their location, size, shape, and other source characteristics are allowed to change in time.

3. Volume sources: Source location, release height, base elevation, initial horizontal and vertical distributions (σ_y, σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying volume source parameters may be entered from an external file. Volume sources with buoyancy can be simulated by treating the source as a point source and entering initial plume size parameters—initial (σ_y, σ_z)—to define the initial size of the volume source.

4. Line sources: Source location, release height, base elevation, average buoyancy parameter, and emission rates for each pollutant. Building data may be entered for line source emissions experiencing building downwash effects. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying line source parameters may be entered from an external file.

Meteorological Data (different forms of meteorological input can be used by CALPUFF):

1. Time-dependent three-dimensional meteorological fields generated by CALMET. This is the preferred mode for running CALPUFF. Inputs into CALMET include surface observations of wind speed, wind direction, temperature, cloud cover, ceiling height, relative humidity, surface pressure, and precipitation (type and amount), and upper air sounding data (wind speed, wind direction, temperature, and height). Optional large-scale model output (*e.g.*, from MM5) can be used by CALMET as well (paragraph 9.3.1.2(d)).

2. Single station surface and upper air meteorological data in CTDMPLUS data file formats (SURFACE.DAT and PROFILE.DAT files). This allows a vertical variation in the meteorological parameters but no spatial variability.

3. Single station meteorological data in ISCST3 data file format. This option does not account for variability of the meteorological parameters in the horizontal or vertical, except as provided for by the use of stability-dependent wind shear exponents and average temperature lapse rates.

Gridded terrain and land use data are required as input into CALMET when Option 1 is used. Geophysical processor programs are provided that interface the modeling system to standard terrain and land use data bases provided by the U.S. Geological Survey (USGS).

Receptor Data:

CALPUFF includes options for gridded and non-gridded (discrete) receptors. Special subgrid-scale receptors are used with the subgrid-scale complex terrain option. An option is provided for discrete receptors to be placed at ground-level or above the local ground level (*i.e.*, flagpole receptors). Gridded and subgrid-scale receptors are placed at the local ground level only.

Other Input:

CALPUFF accepts hourly observations of ozone concentrations for use in its chemical transformation algorithm. Subgrid-scale coastlines can be specified in its coastal boundary file. Optional, user-specified deposition velocities and chemical transformation rates can also be entered. CALPUFF accepts the CTDMPLUS terrain and receptor files for use in its subgrid-scale terrain algorithm. Inflow boundary conditions of modeled pollutants can be specified in a boundary condition file.

c. Output

CALPUFF produces files of hourly concentrations of ambient concentrations for each modeled species, wet deposition fluxes, dry deposition fluxes, and for visibility applications, extinction coefficients. Postprocessing programs (PRTMET and CALPOST) provide options for analysis and display of the modeling results.

d. Type of Model

(1) CALPUFF is a non-steady-state time- and space-dependent Gaussian puff model. CALPUFF includes parameterized gas phase chemical transformation of SO_2, $SO_4^{=}$, NO, NO_2, HNO_3, NO_3^{-}, and organic aerosols. CALPUFF can treat primary pollutants such as PM–10, toxic pollutants, ammonia, and other passive pollutants. The model includes a resistance-based dry deposition model for both gaseous pollutants and particulate matter. Wet deposition is treated using a scavenging coefficient approach. The model has detailed parameterizations of complex terrain effects, including terrain impingement, side-wall scrapping, and steep-walled terrain influences on lateral plume growth. A subgrid-scale complex terrain module based on a dividing streamline concept divides the flow into a lift component traveling over the obstacle and a wrap component deflected around the obstacle.

(2) The meteorological fields used by CALPUFF are produced by the CALMET meteorological model. CALMET includes a diagnostic wind field model containing objective analysis and parameterized treatments of slope flows, valley flows, terrain blocking effects, and kinematic terrain effects, lake and sea breeze circulations, and a divergence minimization procedure. An energy-balance scheme is used to compute sensible and latent heat fluxes and turbulence parameters over land surfaces. A profile method is used over water. CALMET contains interfaces to prognostic meteorological models such as the Penn State/NCAR Mesoscale Model (*e.g.*, MM5; Section 13.0, ref. 94), as well as the RAMS and Eta models.

e. Pollutant Types

CALPUFF may be used to model gaseous pollutants or particulate matter that are inert or undergo linear chemical reactions, such as SO_2, $SO_4^{=}$, NO, NO_2, HNO_3, NO_3^{-}, NH_3, PM–10, and toxic pollutants. For regional haze analyses, sulfate and nitrate particulate components are explicitly treated.

f. Source-Receptor Relationships

CALPUFF contains no fundamental limitations on the number of sources or receptors. Parameter files are provided that allow the user to specify the maximum number of sources, receptors, puffs, species, grid cells, vertical layers, and other model parameters. Its algorithms are designed to be suitable for source-receptor distances from tens of meters to hundreds of kilometers.

g. Plume Behavior

Momentum and buoyant plume rise is treated according to the plume rise equations of Briggs (1974, 1975) for non-downwashing point sources, Schulman and Scire (1980) for line sources and point sources subject to building downwash effects, and Zhang (1993) for buoyant area sources. Stack tip downwash effects and partial plume penetration into elevated temperature inversions are included.

h. Horizontal Winds

A three-dimensional wind field is computed by the CALMET meteorological model. CALMET combines an objective analysis procedure using wind observations with parameterized treatments of slope flows, valley flows, terrain kinematic effects, terrain blocking effects, and sea/lake breeze circulations. CALPUFF may optionally use single station (horizontally-constant) wind fields in the CTDMPLUS data format.

i. Vertical Wind Speed

Vertical wind speeds are not used explicitly by CALPUFF. Vertical winds are used in the development of the horizontal wind components by CALMET.

j. Horizontal Dispersion

Turbulence-based dispersion coefficients provide estimates of horizontal plume dispersion based on measured or computed values of σ_v. The effects of building downwash and buoyancy-induced dispersion are included. The effects of vertical wind shear are included through the puff splitting algorithm. Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

k. Vertical Dispersion

Turbulence-based dispersion coefficients provide estimates of vertical plume dispersion based on measured or computed values of σ_w. The effects of building downwash and buoyancy-induced dispersion are included. Vertical dispersion during convective conditions is simulated with a probability density function (pdf) model based on Weil *et al.* (1997). Options are

provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

l. Chemical Transformation

Gas phase chemical transformations are treated using parameterized models of SO_2 conversion to $SO_4^=$ and NO conversion to NO_2, HNO_3, and $SO_4^=$. Organic aerosol formation is treated.

m. Physical Removal

Dry deposition of gaseous pollutants and particulate matter is parameterized in terms of a resistance-based deposition model. Gravitational settling, inertial impaction, and Brownian motion effects on deposition of particulate matter is included. Wet deposition of gases and particulate matter is parameterized in terms of a scavenging coefficient approach.

n. Evaluation Studies

Berman, S., J.Y. Ku, J. Zhang and S.T. Rao, 1977: Uncertainties in estimating the mixing depth—Comparing three mixing depth models with profiler measurements, *Atmospheric Environment,* 31: 3023–3039.

Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Irwin, J.S. 1997. A Comparison of CALPUFF Modeling Results with 1997 INEL Field Data Results. In *Air Pollution Modeling and its Application, XII.* Edited by S.E. Gyrning and N. Chaumerliac. Plenum Press, New York, NY.

Irwin, J.S., J.S. Scire and D.G. Strimaitis, 1996. A Comparison of CALPUFF Modeling Results with CAPTEX Field Data Results. In *Air Pollution Modeling and its Application, XI.* Edited by S.E. Gyrning and F.A. Schiermeier. Plenum Press, New York, NY.

Strimaitis, D.G., J.S. Scire and J.C. Chang. 1998. Evaluation of the CALPUFF Dispersion Model with Two Power Plant Data Sets. Tenth Joint Conference on the Application of Air Pollution Meteorology, Phoenix, Arizona. American Meteorological Society, Boston, MA. January 11–16, 1998.

A.4 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

Reference

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–181424)

Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology,* 31(7): 633–645.

Availability

This model code is available on EPA's Internet SCRAM Web site and also on diskette (as PB 90–504119) from the National Technical Information Service (Section A.0).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Recommendation for Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- One hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file (''PROFILE''). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: Receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: User inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.*,

- Input meteorological data from ''SURFACE'' and ''PROFILE''
- Stack data for each source
- Terrain information
- Receptor information
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height
- Geometrical relationships between the source and the hill
- Plume characteristics at each receptor, *i.e.,*

—Distance in along-flow and cross flow direction
—Effective plume-receptor height difference
—Effective σ_y σ_z values, both flat terrain and hill induced (the difference shows the effect of the hill)
—Concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top 4 concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate disk file of predicted (1-hour only) concentrations (''CONC'') is written if the user chooses this option. Three forms of output are possible:

(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(3) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with

any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c, and the Froude number above H_c.

h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); see ''Plume Behavior''.

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σ_v, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, *e.g.*, σ_w (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. *Journal of Applied Meteorology,* 31(7): 646–660.

A.6 Emissions and Dispersion Modeling System (EDMS) 3.1

Reference

Benson, Paul E., 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC. (NTIS No. PB 80–220841)

Federal Aviation Administration, 1997. Emissions and Dispersion Modeling System (EDMS) Reference Manual. FAA Report No. FAA–AEE–97–01, USAF Report No. AL/EQ–TR–1997–0010, Federal Aviation Administration, Washington, DC 20591. SEE Availability below. (**Note:** this manual includes supplements that are available on the EDMS Internet Web site: *http://www.aee.faa.gov/aee–100/aee–120/edms/banner.htm*)

Petersen, W.B. and E.D. Rumsey, 1987. User's Guide for PAL 2.0—A Gaussian-Plume Algorithm for Point, Area, and Line Sources. EPA Publication No. EPA–600/8–87–009. Office of Research and Development, Research Triangle Park, NC. (NTIS No. PB 87–168 787/AS)

Availability

EDMS is available for $45 ($55 for users outside of the United States). The order form is available from: *http://www.aee.faa.gov.* Click the EDMS button on the left side of the page, and then click on the ''EDMS Order Form'' link. The $45 cost covers the distribution of the EDMS package: A CD ROM containing the executable installation file, the user manual, and the model changes document. This EDMS package does not include the source code, which is available only through special request and FAA approval. Upon installation the user will have on their computer an executable file for the model and supporting data and program files. Official contact at Federal Aviation Administration: Ms. Julie Draper, AEE, 800 Independence Avenue, SW., Washington, DC 20591, Phone: (202) 267–3494.

Abstract

EDMS is a combined emissions/dispersion model for assessing pollution at civilian airports and military air bases. This model, which was jointly developed by the Federal Aviation Administration (FAA) and the United States Air Force (USAF), produces an emission inventory of all airport sources and calculates concentrations produced by these sources at specified receptors. The system stores emission factors for fixed sources such as fuel storage tanks and incinerators and also for mobile sources such as aircraft or automobiles. The EDMS emissions inventory module incorporates methodologies described in AP–42 for calculating aircraft emissions, on-road and off-road vehicle emissions, and stationary source emissions. The dispersion modeling module incorporates PAL2 and CALINE3 (Section A.3) for the various emission source types. Both of these components interact with the database to retrieve and store data. The dispersion module, which processes point, area, and line sources, also incorporates a special meteorological preprocessor for processing up to one year of National Climatic Data Center (NCDC) hourly data.

a. Recommendations for Regulatory Use

EDMS is appropriate for the following applications:

- Cumulative effect of changes in aircraft operations, point source and mobile source emissions at airports or air bases;
- Simple terrain;
- Non-reactive pollutants;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times.

b. Input Requirements

(1) All data are entered through the EDMS graphical user interface. Typical entry items are annual and hourly source activity, source and receptor coordinates, etc. Some point sources, such as heating plants, require stack height, stack diameter, and effluent temperature inputs.

(2) Wind speed, wind direction, hourly temperature, and Pasquill-Gifford stability category (P–G) are the meteorological inputs. They can be entered manually through the EDMS data entry screens or automatically through the processing of previously loaded NCDC hourly data.

c. Output

Printed outputs consist of:

- A summary emission inventory report with pollutant totals by source category and detailed emission inventory reports for each source category; and
- A concentration summary report for up to 8760 hours (one year) of meteorological data that lists the number of sources, receptors, and the five highest concentrations for applicable averaging periods for the respective primary NAAQS.

d. Type of Model

For its emissions inventory calculations, EDMS uses algorithms consistent with the EPA Compilation of Air Pollutant Emission Factors, AP–42 (Section 11.0, ref. 96). For its dispersion calculations, EDMS uses the Point Area & Line (PAL2) model and the CALifornia LINE source (CALINE3) model, both of which use Gaussian algorithms.

e. Pollutant Types

EDMS includes emission factors for carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, and suspended particles and calculates the dispersion for all except hydrocarbons.

f. Source-Receptor Relationship

(1) Within hardware and memory constraints, there is no upper limit to the number of sources and receptors that can be modeled simultaneously.

(2) The Gaussian point source equation estimates concentrations from point sources after determining the effective height of emission and the upwind and crosswind distance of the source from the receptor. Numerical integration of the Gaussian point source equation is used to determine concentrations from line sources (runways). Integration over area sources (parking lots), which includes edge effects from the source region, is done by considering finite line sources perpendicular to the wind at intervals upwind from the receptor. The crosswind integration is done analytically; integration upwind is done numerically by successive approximations. Terrain elevation differences between sources and receptors are neglected.

(3) A reasonable height above ground level may be specified for each receptor.

g. Plume Behavior

(1) Briggs final plume rise equations are used. If plume height exceeds mixing height, concentrations are assumed equal to zero. Surface concentrations are set to zero when the plume centerline exceeds mixing height.

(2) For roadways, plume rise is not treated.

(3) Building and stack tip downwash effects are not treated.

h. Horizontal Winds

(1) Steady state winds are assumed for each hour. Winds are assumed to be constant with altitude.

(2) Winds are entered manually by the user or automatically by reading previously loaded NCDC annual data files.

i. Vertical Wind Speed

Vertical wind speed is assumed to be zero.

j. Horizontal Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

k. Vertical Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

l. Chemical Transformation

Chemical transformations are not accounted for.

m. Physical Removal

Deposition is not treated.

n. Evaluation Studies

None cited.

A.5 Industrial Source Complex Model (ISC3)

Reference

Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB 95–222741 and PB 95–222758, respectively)

Availability

The model code is available on the EPA's Internet SCRAM website. ISCST3 (as PB 2002–500055) is also available on diskette from the National Technical Information Service (see Section A.0).

Abstract

The ISC3 model is a steady-state Gaussian plume model which can be used to assess pollutant concentrations from a wide variety of sources associated with an industrial source complex. This model can account for the following: Settling and dry deposition of particles; downwash; area, line and volume sources; plume rise as a function of downwind distance; separation of point sources; and limited terrain adjustment. ISC3 operates in both long-term and short-term modes.

a. Recommendations for Regulatory Use

ISC3 is appropriate for the following applications:

- Industrial source complexes;
- Rural or urban areas;
- Flat or rolling terrain;
- Transport distances less than 50 kilometers;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

The following options should be selected for regulatory applications: For short term or long term modeling, set the regulatory ''default option''; *i.e.*, use the keyword *DFAULT,* which automatically selects stack tip downwash, final plume rise, buoyancy induced dispersion (BID), the vertical potential temperature gradient, a treatment for calms, the appropriate wind profile exponents, the appropriate value for pollutant half-life, and a revised building wake effects algorithm; set the ''rural option'' (use the keyword *RURAL*) or ''urban option'' (use the keyword *URBAN*); and set the ''concentration option'' (use the keyword *CONC*).

b. Input Requirements

Source data: Location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature. Optional inputs include source elevation, building dimensions, particle size distribution with corresponding settling velocities, and surface reflection coefficients.

Meteorological data: ISCST3 requires hourly surface weather data from the preprocessor program RAMMET, which provides hourly stability class, wind direction, wind speed, temperature, and mixing height. For ISCLT3, input includes stability wind rose (STAR deck), average afternoon mixing height, average morning mixing height, and average air temperature.

Receptor data: Coordinates and optional ground elevation for each receptor.

c. Output

Printed output options include:

- Program control parameters, source data, and receptor data;
- Tables of hourly meteorological data for each specified day;
- ''N''-day average concentration or total deposition calculated at each receptor for any desired source combinations;
- Concentration or deposition values calculated for any desired source combinations at all receptors for any specified day or time period within the day;
- Tables of highest and second highest concentration or deposition values calculated at each receptor for each specified time period during a(n) ''N''-day period for any desired source combinations, and tables of the maximum 50 concentration or deposition values calculated for any desired source combinations for each specified time period.

d. Type of Model

ISC3 is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources.

e. Pollutant Types

ISC3 may be used to model primary pollutants and continuous releases of toxic and hazardous waste pollutants. Settling and deposition are treated.

f. Source-Receptor Relationships

ISC3 applies user-specified locations for point, line, area and volume sources, and user-specified receptor locations or receptor rings.

User input topographic evaluation for each receptor is used. Elevations above stack top are reduced to the stack top elevation, *i.e.*, ''terrain chopping''.

User input height above ground level may be used when necessary to simulate impact at elevated or ''flag pole'' receptors, *e.g.*, on buildings.

Actual separation between each source-receptor pair is used.

g. Plume Behavior

ISC3 uses Briggs (1969, 1971, 1975) plume rise equations for final rise.

Stack tip downwash equation from Briggs (1974) is used.

Revised building wake effects algorithm is used. For stacks higher than building height plus one-half the lesser of the building height or building width, the building wake algorithm of Huber and Snyder (1976) is used. For lower stacks, the building wake algorithm of Schulman and Scire (Schulman

and Hanna, 1986) is used, but stack tip downwash and BID are not used.

For rolling terrain (terrain not above stack height), plume centerline is horizontal at height of final rise above source.

Fumigation is not treated.

h. Horizontal Winds

Constant, uniform (steady-state) wind is assumed for each hour.

Straight line plume transport is assumed to all downwind distances.

Separate wind speed profile exponents (Irwin, 1979; EPA, 1980) for both rural and urban cases are used.

An optional treatment for calm winds is included for short term modeling.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness or averaging time.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. Vertical Dispersion

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

n. Evaluation Studies

Bowers, J.F. and A.J. Anderson, 1981. An Evaluation Study for the Industrial Source Complex (ISC) Dispersion Model, EPA Publication No. EPA–450/4–81–002. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Bowers, J.F., A.J. Anderson and W.R. Hargraves, 1982. Tests of the Industrial Source Complex (ISC) Dispersion Model at the Armco Middletown, Ohio Steel Mill. EPA Publication No. EPA–450/4–82–006. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 94–183100)

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. Air Pollution Control Association Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

Schulman, L.L. and S.R. Hanna, 1986. Evaluation of Downwash Modification to the Industrial Source Complex Model. *Journal of the Air Pollution Control Association,* 36: 258–264.

A.7 Offshore and Coastal Dispersion Model (OCD)

Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93–144384 and PB 93–144392)

Availability

This model code is available on the EPA's Internet SCRAM Web site and also on diskette (as PB 91–505230) from the National Technical Information Service (see Section A.0). Official contact at Minerals Management Service: Mr. Dirk Herkhof, Parkway Atrium Building, 381 Elden Street, Herndon, VA 20170, Phone: (703) 787–1735.

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Recommendations for Regulatory Use

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf. OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data (over water): Wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

(3) Meteorological data (over land): Wind direction, wind speed, temperature, stability class, mixing height.

(4) Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration files written to disk or tape can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) As in ISC, the basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S.R., L.L. Schulman, R.J. Paine and J.E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84–0069. Environmental Research & Technology, Inc., Concord, MA. (NTIS No. PB 86–159803)

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A.REF References

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Federal Register

Tuesday,
April 15, 2003

Part IV

Federal Election Commission

11 CFR Parts 104, et al.

Public Financing of Presidential Candidates and Nominating Conventions; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 107, 110, 9003, 9004, 9008, 9032 through 9036, and 9038

[Notice 2003–8]

Public Financing of Presidential Candidates and Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules governing publicly financed presidential candidates, in both the primary and general elections, and national nominating conventions. These regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act, which establish eligibility requirements for presidential candidates and convention committees seeking public financing and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed committees and seek repayment where appropriate. The proposed rules implement the Bipartisan Campaign Reform Act of 2002, as it applies particularly to the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act. The proposed rules also reflect the Commission's experience in administering this program during the 2000 election cycle and seek to anticipate some questions that may arise during the 2004 presidential election cycle. No final decisions have been made by the Commission on any of the proposed revisions in this document. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 9, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on May 19, 2003, at 10 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *pubfund2004@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Mr. Robert M. Knop, or Ms. Delanie DeWitt Painter, Attorneys, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is considering revising parts of its regulations governing the public financing of presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the 2004 election cycle. These rules implement the provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 to 9013 [''Fund Act''], and the Presidential Matching Payment Account Act, 26 U.S.C. 9031 to 9042 [''Matching Payment Act'']. In addition, the Commission is considering how the Bipartisan Campaign Reform Act of 2002 [''BCRA''], Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002), in its amendments to the Federal Election Campaign Act of 1971, 2 U.S.C. 431 to 455 [''FECA''], along with the Commission's implementing regulations related to BCRA, may affect the public funding rules. The Commission publishes this Notice of Proposed Rulemaking [''NPRM''] to invite comments on the proposed amendments.

Please note that the proposed revisions would affect primary elections, general elections, and national nominating conventions. The Commission plans to seek comment at a later date on issues that affect only minor and new party candidates. The Commission also plans a separate rulemaking on selected issues related to all Federal candidates, which may include issues related to publicly funded candidates, including questions concerning candidate travel, mailing lists (including list exchanges and list rentals), and allocation of expenses between candidates.

Presidential Candidates

I. Winding Down Costs

The Commission is considering several changes to its rules governing winding down costs for both primary and general election candidates. Many issues that have arisen in the Commission's audits of publicly funded presidential candidates have involved winding down costs.

A. Restrictions on Winding Down Costs

The Commission is revisiting the issue of limiting winding down expenses. The current regulations at 11 CFR 9034.4(a)(3) permit primary candidates to make disbursements for winding down costs, and to receive and use matching funds to make those disbursements, over an indefinite period of time after the candidate's Date of Ineligibility [''DOI'']. Similarly, under 11 CFR 9004.4(a)(4), general election candidates may use public funds after the end of the expenditure report period to pay for the costs of winding down the general election campaign. The rules treat both primary and general election winding down costs as qualified campaign expenses.

The Commission has permitted publicly financed candidates to use Federal funds to pay for certain winding down expenses since 1976. *See* Informational Letter Re: Advisory Opinion Request 1976–54. In 1979, the Commission stated that winding down costs ''although perhaps incurred after a candidate's date of ineligibility may nevertheless be considered qualified campaign expenses if they are associated with the termination of the candidate's campaign.'' *Explanation and Justification for the Rules Governing Presidential Election Campaign Fund and Presidential Primary Matching Fund,* 44 FR 20336, 20340 (Apr. 4, 1979). In 1983, the Commission considered a time limitation for winding down costs, but ultimately did not include it in the final rules because of concerns raised by comments opposing the change. *Explanation and Justification for the Rules Governing Presidential Primary Matching Fund,* 48 FR 5224, 5228 (Feb. 4, 1983).

The Commission again contemplated restrictions on the amount of winding down costs in 1995. *Explanation and Justification for the Rules Governing Public Financing of Presidential Primary*

and General Election Candidates, 60 FR 31854, 31865–31866 (June 16, 1995). The Commission stated that winding down costs ''can result in additional audit fieldwork and preparation of addenda to audit reports'' and that as part of an ''effort to streamline and shorten the audit process,'' the Commission sought comment on ways to reduce winding down time for campaigns. *Id.* The Commission considered limiting winding down expenses to a dollar amount or a fixed percentage of the candidate's total expenditures during the campaign or matching funds certified to a primary candidate. *Id.* at 31866. Alternatively, the Commission considered ''a cutoff date after which winding down expenses would no longer be considered qualified campaign expenses.'' *Id.* Commenters objected that campaigns need resources to respond during the audit process, to defend themselves in enforcement actions and to verify the proper payment of the campaign's remaining bills. *Id.* Ultimately, the Commission did not add new restrictions to the rules governing winding down costs, stating that it would be ''quite difficult to select an amount or time frame sufficient to meet reasonable expenses incurred in winding down the campaign.'' *Id.*

In recent election cycles, the winding down period for some candidates has extended over several years, and the amount of winding down costs has increased. During the audit and repayment process, presidential committees and the Commission's auditors estimate future winding down costs, and may sometimes reach substantially disparate winding down estimates. Issues have arisen as to the appropriate amounts and types of winding down expenses and as to the length of time committees need to wind down. These disputes lengthen the audit and repayment process and can provide a basis for judicial challenges to the Commission's repayment determinations. Both actual and estimated future winding down costs are included in a primary election candidate's Statement of Net Outstanding Campaign Obligations [''NOCO''] or a general election candidate's Statement of Net Outstanding Qualified Campaign Expenses [''NOQCE'']. Consequently, if the Commission auditors' figures are lower than the committee's estimates, a dispute may arise in determining the candidate's NOCO or NOQCE and any remaining entitlement, surplus funds, or resulting repayment. Disallowed winding down expenses can increase the amount of any surplus funds and the resulting repayment determination, or they can reduce or eliminate a deficit and the corresponding amount of a primary candidate's entitlement to matching funds. Therefore, the Commission is again considering ways to limit winding down expenses in order to establish a fair and readily determined amount to ensure public funds are used in accordance with statutory purposes, campaigns are treated consistently with respect to winding down costs, and to provide for more expeditious completion of these matters. Thus, the proposed rules establish both an ending date and maximum amount for winding down costs.

The Commission proposes new sections governing winding down expenses at 11 CFR 9004.11 and 11 CFR 9034.11 that would delineate new restrictions on both the amount and timing of winding down costs. Publicly funded campaign committees should wind down in as quick and efficient manner as possible. The proposed restrictions are intended to contain winding down costs and periods, but allow campaigns a reasonable amount of winding down costs and a long enough winding down period to respond during the audit and repayment process and verify the payment of bills to terminate the campaign. The proposed restrictions would work in concert. Thus, candidates would be unable to continue to use public funds to pay for winding down costs if they reach the monetary limit prior to the end of their winding down period or if their winding down period ends before they reach the monetary limit.

The proposed rules at 11 CFR 9004.11 and 9034.11 include both a temporal restriction and a limitation of the total amount of winding down expenses. The proposed time restriction would permit a candidate to use public funds to pay for winding down expenses only until the end of the ''winding down period.'' The winding down period would begin on the day after the candidate's date of ineligibility, for primary candidates who do not participate in the general election, or the day after the end of the expenditure report period for publicly funded general election candidates, or the day following the date 30 days after the general election for candidates who participate in the general election but do not receive public funds for the general election. The winding down period would end no earlier than the latest of: (1) 30 days after the candidate's receipt of an audit report that does not contain any repayment determinations; (2) 60 days after service of notice to the candidate of the Commission's repayment determination, if the committee does not dispute the repayment determination; or (3) 30 days after service of notice of the Commission's repayment determination following an administrative review.

The proposed winding down period would allow sufficient time for campaigns to seek administrative review of repayment determinations. The 30-day period following a candidate's receipt of an audit report that does not contain a repayment determination would allow sufficient time to complete winding down because the audit and repayment process would have concluded. The 60-day period allowed for winding down after service to a candidate of a repayment determination that the candidate does not dispute reflects the amount of time permitted for candidates to respond to repayment determinations at 11 CFR 9007.2(c)(2) and 9038.2(c)(2). If a candidate disputes any repayment determination by responding and seeking administrative review, the winding down period would extend to 30 days after service of notice of the Commission's repayment determination following administrative review. This is consistent with 11 CFR 9007.2(d)(2) and 9038.2(d)(2), which require candidates to make a post-administrative review repayment within 30 days after service of the Commission's post-administrative review repayment determination. The Commission notes that if it is unable by an affirmative vote of at least 4 of its members to make a repayment determination after an administrative review, the 30-day period would run from the date of service of notice of the Commission's final action concerning the administrative review.

The proposed rules would accommodate repayment determinations related to Commission audit reports, addenda to audit reports and 11 CFR 9039.3 inquiries. Thus, if a candidate did not dispute a repayment determination in an audit report but did subsequently dispute a repayment determination arising from an inquiry pursuant to 11 CFR 9039.3, the candidate's winding down period would extend until 30 days after service of notice of the Commission's repayment determination upon administrative review related to the 11 CFR 9039.3 investigation. In addition, the time restriction's terms are ''no earlier than'' the expiration of the specified time period to permit the Commission the administrative flexibility of choosing a convenient end point, like the end of a month, and to allow for staff to estimate time for

Commission approval and transmittal to the committee of the audit report or repayment determination.

To reflect this new time restriction, the Commission also proposes revising 11 CFR 9004.9(a)(4) and 9034.5(b)(2) to require candidates' NOCO or NOQCE Statements to break down estimated winding down costs through the end of the winding down period, rather than the expected termination of the committee's political activity.

In addition to the temporal restriction, the proposed rules at 11 CFR 9004.4(a)(4) and 9034.4(a)(3) would limit the total amount of winding down expenses that may be paid for, in whole or part, with public funds. This ''winding down limitation'' would limit the total amount of publicly funded winding down expenses for primary candidates to the lesser of either: (1) 5% of the overall expenditure limitation; or (2) 5% of the total of the candidate's expenditures subject to the overall expenditure limitation as of the candidate's DOI, plus the candidate's expenses exempt from the overall expenditure limitation as of DOI, such as fundraising, legal and accounting compliance expenses and other expenses. For general election candidates, the winding down limitation would be the lesser of: (1) 2.5% of the expenditure limitation; or (2) 2.5% of the total of the candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period, plus the candidate's expenses exempt from the expenditure limitation, such as fundraising expenses, as of the end of the expenditure report period.

The Commission notes that the fundraising exemption for general election candidates is applicable only to those candidates who may accept contributions to defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2): minor party candidates and major party candidates who may solicit contributions to make up a deficiency in public funds received. *See* 11 CFR 100.152, 9003.3(b) and (c). Those general election candidates who may solicit contributions may also exempt legal and accounting compliance expenses from their expenditure limitations. *See* 11 CFR 100.146, 9003.3(b) and (c). Thus, the proposed rule would address the calculation of the winding down limitation for those general election candidates who may solicit contributions by calculating the total of their expenditures subject to the limit and their exempt expenses. The winding down limitation for fully funded major party general election candidates would generally be 2.5% of the expenditure limitation. For both primary and general candidates, expenses for transportation of Secret Service and national security staff and media transportation expenses that are reimbursed by the media do not count against the expenditure limitations. *See* 11 CFR 9004.6(a), 9034.6(a). In addition, taxes on non-exempt function income such as interest, dividends and sale of property are exempt from a primary candidate's overall expenditure limitation. *See* 11 CFR 9034.4(a)(4).

Notwithstanding the amount determined based on these calculations, the proposed rule would permit all primary and general election candidates to spend a minimum of $100,000 on winding down costs. The $100,000 minimum winding down limitation is proposed to recognize that publicly funded committees face winding down expenses related to the requirements of the audit and repayment process that do not vary with the size of the committees. The Commission seeks comment on whether $100,000 is the appropriate minimum amount and whether it should be adjusted for inflation or replaced with a percentage of the expenditure limitation.

In practice, the winding down limitation for primary candidates with large campaigns and for fully funded major party general election candidates would be the maximum winding down limitation: 5% of the overall expenditure limitation for primary candidates or 2.5% of the expenditure limitation for general election candidates. For primary candidates with smaller campaigns, the winding down limitation would equal 5% of their expenses prior to DOI. The winding down limitation for most minor party general election candidates and major party candidates who must solicit contributions to make up a deficiency in public funds would equal 2.5% of their expenses during the expenditure report period. For purposes of calculating the amount of the winding down limitation based on a primary or general candidate's expenses, a candidate's expenses would include both disbursements and accounts payable as of the DOI or the end of the expenditure report period for the following categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements (line 29). The following payments would not be included in the expenses used to calculate the winding down limitation: Transfers to other authorized committees (line 24), loan repayments (line 27), or contribution refunds (line 28). The winding down limitation would not include any expenditures in excess of the general election candidate's expenditure limitation or the primary candidate's overall expenditure limitation; thus, making expenditures or accepting in-kind contributions that exceed the expenditure limits would not provide a basis for an increased winding down limitation. The maximum winding down limitation would be calculated based upon a percentage of the primary candidate's overall expenditure limitation or the general election candidate's expenditure limitation pursuant to 26 U.S.C. 441a(b), similar to the calculation of the 20% fundraising exemption or the 15% compliance exemption. *See* 11 CFR 100.146, 100.152, 9002.11(b)(5) and 9035.1(c)(1) and (2).

All expenses incurred and paid by a candidate during the winding down period, including fundraising costs, would be subject to the winding down limitation. Expenses for legal and accounting compliance costs paid for with public funds would count against the winding down limitation, but compliance costs paid by a General Election Legal and Accounting Compliance Fund [''GELAC''] would not count against the winding down limitation.

The Commission reviewed the amounts spent for winding down costs by all publicly funded candidates during the 2000 election cycle. It compared their approximate winding down costs to the proposed winding down limitation. Of three publicly funded general election candidates, one would have spent less than 1% of the expenditure limitation, the second would have spent less than 2% of his expenditures, while the third would have spent only slightly more than the 2.5% winding down limitation. The last committee paid some of its winding down expenses with GELAC funds, which reduced its percentage to less than 2%. Ten primary candidates received matching funds in 2000. Three of these primary candidates' winding down limitations would have been calculated based on the maximum winding down limitation of 5% of the overall expenditure limitation. Of these, one would have exceeded the winding down limitation, spending more than approximately 8% of the expenditure limitation. Six primary candidates' winding down limitations would have been calculated based on their expenditures. Of these, four candidates would have exceeded the 5% winding down limitation, with winding down costs ranging between approximately

13% and 42% of their expenditures. One candidate that would have been subject to the minimum winding down limitation of $100,000 spent substantially less than that amount. Of all 13 publicly funded committees in the 2000 presidential elections, five primary committees had winding down expenses that would have exceeded the proposed amount limitation. One of these committees had sufficient funds in its related GELAC that could have paid the excessive winding down expenses. The other four committees would have received fewer matching funds after their DOIs.[1]

The proposal puts forth a lower percentage for general election campaign committees than for primary campaigns for several reasons. General election candidates may pay for winding down costs with funds from the candidates' GELAC, an option not currently available for primary election campaigns. General election campaigns are also shorter in length than most primary campaigns and thus, may have fewer transactions and vendors to deal with while terminating the campaign. The Commission also notes that the total amount of public funds and expenditure limitations are larger for major party candidates who receive public funds; thus, a smaller percentage of their expenditures would result in a larger dollar figure.

Under the proposed rules, the use of public funds to pay for winding down expenses in excess of these restrictions would constitute a non-qualified campaign expense that may be subject to repayment. However, these restrictions would apply to the use of public funds or a mixture of public and private funds for winding down costs. The proposed rules would not limit the payment of winding down expenses from a candidate's GELAC. The proposed rules would also allow a primary candidate who is in a deficit position at the DOI to pay for winding down costs in excess of the restrictions after the committee's accounts no longer contain any matching funds. *See* 11 CFR 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI would be required to make a surplus repayment to the United States Treasury before they could use private funds for winding down costs in excess of the restrictions. *See* 11 CFR 9038.3(c).

The proposal includes both temporal and amount restrictions rather than just one or the other so that these restrictions would work together to reinforce each other. The proposed rules would not permit the use of public funds for winding down costs after either: (1) The total amount of winding down expenses reach the winding down dollar limitation or (2) the end of the winding down period, whichever event occurs first. The proposed restrictions would prevent the pre-payment of large amounts for speculative future winding down goods and services prior to the end of the winding down period. They would also prevent a prolonged winding down period from extending and complicating the audit process. In addition, the proposed rules are intended to reflect factors that could affect the amount of winding down costs needed to terminate the campaign. The proposed winding down limitation is based on a percentage of a campaign's expenses to reflect that larger campaigns generally incur more expenses as they terminate their activities. The calculation includes exempt expenses such as fundraising and legal and accounting compliance costs to reflect the actual size of the campaign that is winding down. In addition, the proposed rule would restrict the expenses used to calculate the winding down limitation to the period prior to a primary candidate's DOI or the end of a general election candidate's expenditure report period to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

One factor under consideration, but not included in the proposed rules that follow, is the number of complaints and other compliance actions filed against a presidential candidate or campaign committee. Winding down costs include, *inter alia,* the costs of ''complying with the post-election requirements of the Act,'' such as the audit and repayment process, reporting and recordkeeping. 11 CFR 9004.4(a)(4) and 9034.4(a)(3). The compliance process is separate from the required audit and repayment process and its requirements are not election dependent, which raises the issue of whether such compliance costs should be considered ''post-election requirements of the Act.'' Compliance matters, unlike compulsory audits and repayment determinations, are not unique to candidates who receive public funds. Consequently, the proposed rule would allow a publicly funded candidate to pay initial expenses for compliance matters arising from the campaign with public funds as winding down costs, but the winding down period would not be prolonged until enforcement matters related to the campaign have closed, if the audit and repayment process has concluded. Private funds would be available to general election candidates through their GELAC and to primary candidates after their accounts no longer contain public funds. As discussed below, however, the proposed rules would also permit a GELAC to pay the primary committee's winding down expenses under certain conditions. The Commission seeks comment on whether the existence of compliance matters should be considered as a factor in determining a candidate's winding down period or winding down limitation.

The proposed new sections at 11 CFR 9004.11 (general election) and 9034.11 (primary election) governing winding down costs are intended to simplify and clarify the rules governing winding down costs. Proposed new 11 CFR 9004.11 and 9034.11 contain the definition of winding down costs, moved from current sections 9004.4(a)(4) and 9034.4(a)(3)(i), the proposed temporal and monetary restrictions, and proposed rules governing the allocation of winding down costs between a candidate's primary election and general election campaigns. In addition, the Commission proposes revisions to 11 CFR 9004.4(a)(4) and 9034.4(a)(3)(i) and (ii) to move provisions from those sections to the new sections and to otherwise conform these sections to the proposed new rules. Proposed 11 CFR 9004.4(a)(4) would state that payments may be used to defray winding down costs subject to the restrictions of new 11 CFR 9004.11. Current section 9004.4(a)(4)(ii) would be renumbered as 9004.4(a)(5). Proposed 11 CFR 9034.4(a)(3)(i) would state that winding down costs subject to the restrictions in proposed 11 CFR 9034.11 are qualified campaign expenses. Proposed 11 CFR 9034.4(a)(3)(ii) would include a reference to proposed 11 CFR 9034.11.

The Commission seeks comment on the proposed winding down restrictions. Are the restrictions fair to publicly funded committees? Should winding down expenses be limited to a fixed dollar amount or a combination of a dollar amount and a percentage rather than the proposed percentage? If so, what dollar amount would be appropriate? Would it be preferable to apply a percentage or dollar cap to specific categories of winding down expenses rather than the total of winding down costs? Would a shorter or longer winding down period be preferable to the proposed time period? Should there be a minimum winding

[1] Of course, this comparison is hypothetical because the committees may have behaved differently had the proposed rules been in effect.

down period, and if so, how long should the minimum winding down period be?

Specifically, the Commission seeks comment on whether the winding down period should include an additional time period or dollar allowance for candidates who seek judicial review of a Commission repayment determination and if so, how long that period should be. Should candidates who accept public funds for both the primary and general elections be allowed to combine their primary and general election winding down limitations into a joint monetary limit for the total winding down expenses of both committees, with the temporal limit based on the last repayment determination received by either committee? Would the proposed rule encourage candidates to attempt to extend the audit process to lengthen the winding down period?

The Commission is also considering two alternatives to the proposed temporal and monetary restrictions on winding down expenses. The first alternative would, in effect, disallow the use of public funds to pay for winding down costs. Under this alternative, a primary election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the candidate's DOI or (2) all expenses for goods or services to be used after the DOI even if the expenses are incurred prior to the DOI. A general election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the end of the expenditure report period or (2) all expenses for goods or services to be used after the end of the expenditure report period even if they are incurred during the expenditure report period.

This alternative would end the Commission's treatment of winding down costs as qualified campaign expenses. Winding down costs are a category of qualified campaign expenses recognized by the Commission that is not specifically identified in the Fund Act or the Matching Payment Act. This category of qualified campaign expenses is an exception to the rules requiring qualified campaign expenses to be incurred during the expenditure report period, for general election candidates, 26 U.S.C. 9002(11)(B), or prior to a primary candidate's DOI, 11 CFR 9032.9(a)(1); *see also* 26 U.S.C. 9032(6) and 9033(c)(2). Since winding down costs are incurred after the end of a candidate's active campaign, the question arises whether they are incurred ''to further'' a general election candidate's election to the office of President or Vice President, 26 U.S.C. 9002(11), or ''in connection with'' a primary candidate's campaign for the nomination, 26 U.S.C. 9032(9). Comments are sought on whether permitting public funds to be used for winding down costs may be inconsistent with these provisions or with 26 U.S.C. 9038(b)(3), which requires candidates to retain matching funds ''for the liquidation of all obligations to pay qualified campaign expenses for a period not exceeding 6 months after the end of the matching payment period'' and to ''promptly'' repay a ratio of any surplus funds.

Disallowing the use of public funds for winding down expenses would ensure that public funds are used for expenses that further a candidate's active campaign. Under this alternative, general election candidates would be able to pay for their winding down expenses with GELAC funds. Primary candidates would not pay for winding down costs with matching funds, but could use contributions or other private funds to pay these costs. Under this approach, a primary candidate's winding down costs would not count as liabilities in determining the candidate's net outstanding campaign obligations; thus, winding down costs could not increase a primary candidate's entitlement to Federal funds or decrease a surplus.

Please note that this alternative is not set forth in the draft rules that follow. This alternative would require the deletion of the rules governing winding down costs as well as changes to other rules to delete references to winding down costs. Specifically, this alternative would require deletion or revisions to: 11 CFR 9002.11(c) (expenses after the last day of the candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a)); 9004.4(a)(4) (winding down costs as qualified campaign expenses); 9004.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9004.4(a)(4)); 9004.9(a)(1) and (4) (inclusion of estimated winding down expenses in the NOCQE statement); 9032.9(c) (expenses after the last day of candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a)); 9034.4(a)(3) (winding down costs as qualified campaign expenses); 9034.4(a)(5) (bonuses are permitted until 30 days after DOI); 9034.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9034.4(a)(3)); and 9034.5(b)(1) and (2) (inclusion of estimated winding down expenses in the NOCO statement). Please also note that this alternative is inconsistent with some of the other proposals in this rulemaking, such as dividing winding down expenses between a candidate's primary and general campaigns or treating certain convention expenses of ineligible candidates as qualified campaign expenses, as discussed below. The Commission seeks comment on this alternative approach. Would disallowing the use of public funds for winding down costs hinder candidates from responding adequately during the audit and repayment process? Would this alternative serve as a disincentive for candidates to seek public funds? Is this approach nonetheless required by the Fund Act and the Matching Payment Act? Should primary candidates be permitted to establish a separate account of solely private funds, with separate contribution limits for contributors, to be used for winding down expenses? If so, may the Commission permit contributors to make more than one contribution of the amount specified in 2 U.S.C. 441a(a)(1)(A) or 2 U.S.C. 441a(a)(2)(A) to the same candidate or authorized committee? May the Commission permit such candidates and authorized committees to accept such contributions consistent with 2 U.S.C. 441a(f) and 441i(e)(1)(A)?

The Commission is also considering a second alternative approach to winding down costs. This alternative, which is also not set forth in the draft rules that follow, would not place restrictions on the amount or timing of winding down costs but would more precisely delineate the types of winding down costs that are permissible. The Commission is considering various categories of permissible winding down costs including staff salaries, legal and accounting services, office space rental, utilities, computer services, other overhead expenses, consultants, storage, insurance, office supplies and fundraising expenses.

The Commission seeks comment on this alternative. Disputes over winding down expenses often concern the appropriate amounts spent for particular expenses, the appropriate length of time a campaign should continue to need certain goods or services, and whether the campaign committee has provided sufficient documentation of expenses. Should a list of permissible winding down expenses provide guidance as to the appropriate amounts, duration, or documentation required to support such expenses? Should there be any dollar limits on any of the expenses? Would this alternative reduce the amount of winding down expenses? The Commission also seeks comment on any

other alternative proposals for limiting winding down expenses.

The Commission proposes another change to clarify the rules on winding down costs at 11 CFR 9034.4(b)(3). Current paragraph (a) of 11 CFR 9034.4 lists qualified campaign expenses, while paragraph (b) sets forth certain non-qualified campaign expenses. Paragraph (a)(1) states that, except as provided in paragraph (b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses. Paragraph (b)(3) states that general election and post-ineligibility expenditures are not qualified campaign expenses, except to the extent permitted under paragraph (a)(3), which concerns winding down and continuing-to-campaign expenses. For clarity, the Commission is proposing to add a provision to paragraph (b)(3) to specifically state that the winding down and continuing-to-campaign costs addressed in paragraph (a)(3) and 11 CFR 9034.11 are considered qualified campaign expenses. Corresponding changes would be made to the similar provision for the general election, 11 CFR 9004.4(b)(3).

Please note that the Commission is not proposing any changes at this time to 11 CFR 9008.10(g)(7), governing winding down costs of convention committees. The Commission nonetheless welcomes comments as to whether similar restrictions should apply to winding down expenses for convention committees.

B. Candidates Who Run in Both Primary and General Elections

The Commission seeks comment on proposed revisions to its rules to clarify which costs constitute primary winding down costs for candidates who participate in both the primary and general elections. The Commission's current regulations allow only candidates who do not run in the general election to begin to incur winding down costs and to treat winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. *See* 11 CFR 9034.4(a)(3)(i) and (iii). Candidates who run in the general election, whether or not they receive public funds for that election, must wait until the day following the date 30 days after the general election, which is the end of the expenditure report period for publicly financed general election candidates, 11 CFR 9002.12, before they may begin to incur and pay winding down expenses or allocate them as 100% compliance expenses. In 1999, the Commission revised 11 CFR 9034.4(a)(3)(iii) to allow primary candidates who do not run in the general election to begin to treat 100% of winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. *Explanation and Justification for the Rules Governing Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49358–59 (Sept. 13, 1999). The wording of 11 CFR 9034.4(a)(3)(iii), however, refers to ''candidates who receive public funding for the general election'' but does not expressly address the situation of a candidate who runs in both the primary and general elections and does not receive public funding for the general election. In the 2000 election, questions arose about how to treat administrative expenses incurred during the general election expenditure report period by a publicly funded primary election candidate who also ran in the general election but did not receive public funds for the general election.

The Commission's approach in 11 CFR 9034.4(a)(3)(iii) reflects its belief that candidates who are actively campaigning in the general election should not be considered to be terminating political activity and winding down their primary campaigns. The proposal seeks to extend this concept to apply without regard to whether their general election campaigns are publicly funded. Expenses incurred by such candidates during the expenditure report period, for publicly funded general election candidates, or the equivalent time period ending 30 days after the general election, for other general election candidates, should be considered general election expenses, rather than primary winding down costs. This approach prevents the use of primary matching funds for non-qualified expenses related to the general election. *See* 11 CFR 9032.9(a) and 9034.4(b). Although this approach may result in general election campaigns incurring some administrative costs related to terminating the primary campaign during the general election period, identifying those costs would consume resources of audited committees and the Commission. This approach is also consistent with the Commission's bright line rules for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e), which in effect allow some primary related expenses to be paid by the general election committee and *vice versa.*

The Commission proposes a new paragraph at 11 CFR 9034.11(e), which is based on current 11 CFR 9034.4(a)(3)(i), with revisions to clarify this rule and to prevent any future confusion. The proposed rule at 11 CFR 9034.11(e) would provide that a candidate who runs in the general election must wait until the day following the date 30 days after the general election before using matching funds for primary winding down costs, regardless of whether the candidate receives public funds for the general election. This rule would also clarify that no expenses incurred prior to 31 days after the general election by candidates who run in the general election may be considered primary winding down costs or paid with matching funds.

The Commission also proposes revisions to 11 CFR 9035.1(c)(1) that would include a revised version of current 11 CFR 9034.4(a)(3)(iii) to provide that only candidates who do not run in the general election may treat 100% of salary, overhead and computer expenses as compliance expenses immediately after their date of ineligibility. Candidates who run in the general election must wait until the day following the date 30 days after the general election to treat these expenses as exempt compliance costs. The Commission proposes, for greater clarity, to move this revised version of 11 CFR 9034.4(a)(3)(iii) into current 11 CFR 9035.1(c)(1), which concerns the legal and compliance exemption to the expenditure limitations, because this paragraph concerns the treatment of certain winding down expenses as 100% compliance costs.

The Commission seeks comment on these proposals. Should there be an exception for expenses incurred during the time period prior to 31 days after the general election that are solely related to winding down the primary campaign, and if so, what requirements should there be to ensure that such costs are solely related to winding down the primary campaign? For example, should there be an exception for fundraising expenses incurred during this period to retire a primary committee's NOCO? Would primary-related fundraising activities during this period also have the effect of promoting the candidate's general election campaign? Would a fundraising exception encourage candidates to add a solicitation to general election related events or communications during this period in order to treat expenses for those activities as primary winding down expenses?

In addition, the definition of ''winding down costs'' in new section 9034.11(a) would include a revised

version of the first sentence of current 11 CFR 9034.4(a)(3)(i) to clarify that winding down costs are limited to costs associated with the termination of political activity related to seeking that candidate's nomination for election. This would clarify that primary election campaign winding down expenses are legally distinct from general election campaign winding down expenses.

A related issue is how to allocate winding down expenses for candidates who run in both the primary and general elections. Allocating winding down expenses between the primary and general election campaigns during the period following the date 30 days after the general election, can be complicated because both campaigns are winding down simultaneously, often using the same staff, offices, equipment, vendors and legal representatives. The Commission proposes new sections 11 CFR 9004.11(d) and 9034.11(d) allowing a candidate who runs in both the primary and general election to divide winding down costs between the primary and general campaigns using any allocation method, including allowing either the primary or the general campaign to pay 100% of winding down expenses.

This proposal would give candidates the flexibility to allocate their winding down expenses based on the particular circumstances of their campaigns. Winding down activity for some candidates may be largely or entirely focused on one election. For example, candidates who do not receive public funds for the general election might concentrate winding down activity on their publicly funded primary committee. In addition, candidates might concentrate winding down efforts and expenses on the committee that must address more difficult and complex issues in the audit and repayment process or that has a larger potential repayment.

An alternative proposal for dividing winding down expenses between the primary and general campaigns, which was used in some 2000 election cycle audits, would be to divide expenses equally but allow committees to use an alternative allocation method if they provide sufficient documentation to support that allocation. Because the documentation of the primary and general election committees' allocation must be reviewed and disputes may arise about whether committees have provided sufficient documentation to support their proposed allocation, this alternative could prolong the audit process and use the resources of the Commission and audited committees. The draft rules that follow do not incorporate this alternative. The Commission seeks comment as to what amount or type of documentation should be considered sufficient to support allocations proposed by committees. What standard would be appropriate for evaluating alternative allocations proposed by committees?

The Commission seeks comment on any other method of allocating winding down expenses between the primary and general election committees. Specifically, would either of these alternative proposals result in the primary or general election campaign using public funds to pay for non-qualified expenses related to the other election? Should campaigns be permitted to allocate their costs to effectually reduce potential repayments? Would a default allocation of 50% for each committee be equitable to differently situated candidates? Finally, are these alternative approaches inconsistent with the Fund Act or the Matching Payment Act?

C. Use of GELAC Funds To Pay Winding Down Costs

The Commission's rules at 11 CFR 9003.3(a) permit publicly funded major party presidential candidates to establish and solicit private contributions to GELAC funds, if certain conditions are met. Payments from these accounts for exempt legal and accounting services are not counted against the candidate's overall expenditure limits under 2 U.S.C. 441a(b) and 11 CFR 110.8. *See* 11 CFR 100.8(b)(15).

In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii) to address the use of the GELAC to pay certain winding down costs of general election candidates. This paragraph states that 100% of salary, overhead and computer expenses incurred by a campaign after the end of the expenditure report period may be paid from a GELAC, and that such expenditures will be presumed to be solely to ensure compliance with the FECA and the Fund Act. 60 FR 31875 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the Code of Federal Regulations, but was inadvertently omitted from the 2000, 2001 and 2002 editions. The Commission intends to reinstate this important provision, with certain revisions discussed below, but move it to the regulation that governs GELAC funds, proposed 11 CFR 9003.3(a)(2)(i)(I).

The Commission is also considering whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses incurred after the end of the expenditure report period. As noted above, the primary and general election campaigns are simultaneously winding down during this period and often share salary, overhead and computer expenses. The current regulations at 11 CFR 9034.4(a)(3)(iii) recognize that a significant amount of winding down activity during this period is related to compliance and allow primary campaigns to treat 100% of salary, overhead and computer costs during this period as legal and accounting compliance expenses exempt from the expenditure limitations. Permitting the GELAC to pay salary, overhead, and computer costs after the end of the expenditure report period for both the primary and general campaigns would allow candidates who run in both the primary and general elections to choose to pay these costs from the GELAC without having to allocate them between the primary and general campaign committees. In addition, the primary and general election committees often share winding down expenses related to legal and accounting compliance such as attorneys and accountants. Further, primary campaign committees may lack sufficient funds to complete winding down activity.

The Commission proposes to revise the language of former 11 CFR 9004.4(a)(4)(iii), at proposed 11 CFR 9003.3(a)(2)(i)(I), to allow contributions to the GELAC to be used for winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the primary or general election committee or by both committees. All salary, overhead, and computer expenses after the end of the expenditure report period would be considered winding down expenses for legal and accounting compliance activities payable by the GELAC.

The Commission seeks comments on the proposed rule. Should the GELAC be allowed to pay for the primary committee's legal and accounting compliance expenses during the winding down period or must the primary committee pay all primary winding down expenses? The Commission also seeks comment on whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses other than legal and accounting compliance expenses, salary, overhead and computer costs. Should the rule list in more detail the types of primary winding down expenses that may be paid with GELAC funds?

D. Convention Expenses of Ineligible Candidates

The Commission proposes to add a new provision to the rules to reflect its decision in AO 2000–12 permitting certain convention expenses incurred by presidential primary candidates after their dates of ineligibility to be considered qualified campaign expenses. In AO 2000–12, the Commission determined that certain expenses related to meetings and events at the national nominating conventions could be treated as qualified campaign expenses by ineligible candidates. First, the Commission determined that expenses for certain meetings and receptions to thank delegates and supporters could be treated as qualified campaign expenses under 11 CFR 9034.4(a)(5), which specifically includes gifts to ''committee employees, consultants and volunteers'' for ''campaign-related activities or services.'' The current rule limits this to $150 per individual and $20,000 total for all gifts. The Commission noted that such meetings should be restricted to attendees who served the campaign in the capacity of a committee employee, consultant or volunteer to be considered qualified campaign expenses, and that the current regulation does not allow the payment of travel expenses to attend or organize the events to be considered qualified campaign expenses.

Second, the Commission permitted the ineligible candidates to incur qualified campaign expenses related to fundraising events at the conventions. The Commission stated that as long as the candidates' primary committees had remaining net outstanding campaign obligations, they may continue to receive matching funds, and may use matching funds to pay for fundraising expenses to retire those campaign obligations as qualified campaign expenses. *See* 11 CFR 9034.1(b). The Commission concluded that the candidates may incur qualified campaign expenses for expenses related to specific fundraising events held at the nominating conventions. It stated that the candidates could also use matching funds to pay the travel expenses for candidates to attend the fundraising events and for campaign staff who participate in the organizing and administration of the fundraising events. The Commission emphasized that the fundraising expenses must be for specific fundraising events at the convention. In addition, expenses allocable to participation by the candidates or their staff members in any other part of the conventions would constitute non-qualified campaign expenses. Finally, such expenses would be qualified campaign expenses only if, at the time of the convention, the candidates had net outstanding campaign obligations. *See* 11 CFR 9034.1(b).

Consequently, the Commission proposes adding new 11 CFR 9034.4(a)(6) to reflect its decision in AO 2000–12. The proposed rules at paragraph (a)(6)(i) provide that expenses directly related to a specific fundraising event at a national nominating convention to retire an ineligible candidate's debt owed by the candidate's primary committee, including travel expenses for the candidate to attend the fundraising event and for those campaign staff who organize and administer the fundraising event, may be considered qualified campaign expenses. This paragraph provides that covered travel expenses would consist of transportation, hotel or other lodging, and *per diem* subsistence for the candidates, their spouses, campaign staff, and volunteers who organize or administer the event. The proposed rule provides that expenses allocable to participation by the candidate or staff in the national nominating convention itself, or in any activities related to the convention, other than the fundraising event, would constitute non-qualified campaign expenses. The proposed rule also states that expenses for a fundraising event at the convention may be considered qualified campaign expenses only to the extent that, on the date of the fundraising event, the candidate has net outstanding campaign obligations pursuant to 11 CFR 9034.1(b). Proposed paragraph (a)(6)(ii) would also permit expenses for events to thank campaign employees, consultants and volunteers to be considered qualified campaign expenses, but would provide that travel expenses to such events would not constitute qualified campaign expenses.

The Commission's decision in AO 2000–12 delineates a carefully circumscribed exception to the Commission's general past practice that convention expenses of ineligible candidates are non-qualified campaign expenses. As AO 2000–12 states, the Commission has generally concluded in its audits of presidential primary campaign committees that expenses associated with attending national nominating conventions incurred by losing primary candidates are non-qualified campaign expenses. The opinion discusses a number of audits of presidential campaigns in which the Commission determined that expenses of ineligible candidates related to the national nominating convention such as preparatory staff work, hotel, and airline tickets were non-qualified campaign expenses. For example, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's determination that convention-related expenses incurred by an unsuccessful presidential campaign committee to attend the convention and for activities to bolster the support and enthusiasm of the candidate's delegates were non-qualified campaign expenses where the committee claimed that the expenses were fundraising activities because the video and audio record of the candidate's attendance at the convention would be used for later fundraising efforts. *Robertson* v. *FEC*, 45 F.3d 486, 492 (D.C. Cir. 1995). AO 2000–12 explains that while the Commission's general practice is that expenses for ineligible candidates, such as travel costs, related to the convention are non-qualified campaign expenses, matching funds may be used for such expenses in certain limited circumstances.

Prior to the 1996 election cycle, the Commission sought comment on whether to expand the definition of ''qualified campaign expense'' in 11 CFR 9032.9 to include losing candidates' convention expenses. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 60 FR 31854, 31871 (June 16, 1995). In declining to do so, however, the Commission noted that the statutory definition of qualified campaign expense is limited to expenses ''incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election.'' *Id.; see* 26 U.S.C. 9032(9)(A). This definition arguably does not apply to those no longer seeking the presidential nomination. However, the 1995 *Explanation and Justification* cited above noted that candidates are permitted to count fundraising expenses incurred after DOI, including those incurred at a national nominating convention, as qualified campaign expenses as part of their winding down costs, but only those expenses directly related to fundraising are qualified campaign expenses. *Id.*

The Commission seeks comment on this proposed rule and on its previous treatment of these expenses. Should the Commission incorporate the exception described in AO 2000–12 into its regulations? Are there any possible adverse consequences of allowing ineligible candidates to treat these expenses as qualified campaign expenses? Should the Commission

retain its general practice that convention expenses of ineligible candidates are non-qualified campaign expenses? Should the definition of ''qualified campaign expense'' in 11 CFR 9032.9 or the rules governing the use of funds for qualified campaign expenses in 11 CFR 9034.4 be expanded to include as qualified campaign expenses the convention expenses of ineligible primary candidates who speak, appear, serve as a delegate or retain delegates, or who are nominated as the party's vice presidential candidate, or who otherwise participate in the party's national nominating convention? How would such a change be reconciled with the requirement that qualified campaign expenses must be made ''in connection with [a candidate's] campaign for nomination for election?'' *See* 26 U.S.C. 9032(9). Should expenses of ineligible presidential primary candidates at the national convention be considered permissible winding down costs or some other type of qualified campaign expense?

II. Primary Expenditure Limitations and Repayments

A. In-Kind Contributions Count Toward the Expenditure Limits (11 CFR 9035.1 and 9038.2)

The Commission proposes to clarify its rules at 11 CFR 9035.1 and 9038.2(b)(2)(ii)(A) concerning attribution of expenses to the expenditure limitations for presidential primary candidates and repayments based upon expenditures in excess of those limitations. The Commission's recent rulemaking on coordinated and independent expenditures implementing the requirements of BCRA delineates the rules governing coordinated expenditures, coordinated communications, party expenditures, coordinated party communications and the dissemination, distribution or republication of campaign materials prepared by a candidate. *See Explanation and Justification for the Rules Governing Coordinated and Independent Expenditures*, 68 FR 421 (Jan. 3, 2002). In that rulemaking, the Commission generally defined ''coordinated'' for the purpose of coordinated expenditures. 11 CFR 109.20. The final rules also establish particular criteria for a communication to be considered a ''coordinated communication.'' *See*, *e.g.*, 11 CFR 109.21(c) (content standards) and (d) (conduct standards). In addition to these general rules, the particular circumstances of political party committees are addressed, and ''party coordinated communications'' are defined. *See* 11 CFR 109.37 and 11 CFR part 109, subpart D.

In establishing new rules governing coordinated expenditures, the Commission recognized that some in-kind contributions arising from coordinated communications made by party committees or other persons may not necessarily be received or accepted by the candidate. *See* 11 CFR 109.21(b)(2) and 11 CFR 109.37(a)(3). The Commission believes guidance would be helpful regarding the application of the coordinated and independent expenditures final rules to situations involving the expenditure limitations applicable to publicly funded presidential candidates. Specifically, the Commission proposes to address the extent to which in-kind contributions, coordinated expenditures, coordinated communications, coordinated party expenditures, and coordinated party communications will count against expenditure limitations and will be included in the total amount of a publicly funded candidate's expenditures subject to the limits for purposes of repayment determinations.

The current rules at 11 CFR 9035.1(a) and 11 CFR 110.8(a) set forth the state-by-state and overall expenditure limitations for candidates receiving public funds for the primary election. *See* 2 U.S.C. 441a(b), (c), and 26 U.S.C. 9035(a). The Commission has generally treated the receipt of in-kind contributions by presidential primary candidates as expenditures made by those candidates and has included in-kind contributions in the amount of the candidate's expenditures subject to the expenditure limitations and in the calculation of repayments based on amounts in excess of the candidate's expenditure limitations. For example, in a repayment determination arising from an audit of a 1988 candidate, the Commission concluded that in-kind contributions for testing-the-waters expenses from a multicandidate political committee ''leadership PAC'' associated with a presidential candidate to that candidate were subject to the candidate's state-by-state expenditure limitation and part of the total of the candidate's expenditures subject to *pro rata* repayment. In addition, the Commission concluded, in making that repayment determination, that Federal matching funds and private contributions were commingled in a committee's accounts. The Commission considered in-kind contributions to be part of this commingled pool of available funds, and thus, these expenditures were included in calculating the amount in excess of the limitations subject to *pro rata* repayment.

During certain audits from the 1996 and 2000 cycles, the Commission considered whether some of the costs of producing and airing television advertisements during the presidential primary and general election campaigns, which were paid by the national party committees, should be treated as coordinated in-kind contributions to presidential primary candidates, and if so, whether such costs should count against presidential candidates' expenditure limitations and be included in the amount of expenditures in excess of the limitations that would be subject to *pro rata* repayment. After considering this issue, the Commission declined to make repayment determinations on this basis in these audits.

A related issue is whether current 11 CFR 9038.2(b)(2)(ii)(A) represents a permissible interpretation of the Matching Payment Act. Section 9038.2(b)(2)(ii)(A) provides that one example of a Commission repayment determination for the use of funds for non-qualified campaign expenses is a determination that a candidate, a candidate's authorized committee(s), or agents have made expenditures in excess of the expenditure limitations set out at 11 CFR part 9035. The Commission considered this issue in a rulemaking proceeding prior to the 2000 election cycle, but made no changes to the regulation at that time. *Notice of Disposition for the Rules Governing Public Funding of Presidential Primary Candidates-Repayments*, 65 FR 15273 (Mar. 22, 2000). The Notice of Disposition sets forth alternative arguments concerning whether this rule has a statutory basis and states that the Commission did not change the rule because there was no consensus in favor of changing the regulation. *Id.* at 15275. Although the Commission recommended that Congress revise 26 U.S.C. 9038(b) to specifically state whether repayments must be made by publicly funded primary candidates who have made expenditures that exceed the spending limits, to date Congress has not acted to clarify this issue. *See* FEC, *Legislative Recommendations 2002* (May 14, 2002). At this point, the Commission is considering whether to clarify that under section 9038.2(b)(2)(ii)(A), it will continue to seek repayments from primary candidates who exceed the expenditure limitations, including candidates who have received in-kind contributions.

1. Revisions to 11 CFR 9035.1

The Commission believes that additional guidance concerning the attribution of in-kind contributions to the expenditure limitations would be beneficial. The Commission proposes to revise its rules by adding a new paragraph at 11 CFR 9035.1(a)(3) to provide that guidance and to apply the Commission's recently promulgated final rules on Coordinated and Independent Expenditures, 68 FR 421 (Jan. 3, 2003), to publicly funded presidential candidates. The proposed rules that follow are intended to clarify that certain in-kind contributions will count against the presidential candidate's state-by-state and overall expenditure limitations under certain conditions, as explained below. Included are certain in-kind contributions received or accepted in the form of coordinated expenditures pursuant to 11 CFR 109.20, coordinated communications pursuant to 11 CFR 109.21, and coordinated party expenditures in excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a), which would include party coordinated communications pursuant to 11 CFR 109.37.

The Commission notes that the rules treat some coordinated expenditures as made by a person or party committee, but not as received or accepted by a candidate. *See* 11 CFR 109.21(b)(2) and 109.37(a)(3). Specifically, expenditures that meet the conduct standards for a common vendor at 11 CFR 109.21(d)(4) or a former employee or independent contractor at 11 CFR 109.21(d)(5) are not treated as received or accepted by a candidate unless the candidate, authorized committee, or their agent engages in the conduct described in 11 CFR 109.21(d)(1) (request or suggestion), (d)(2) (material involvement), or (d)(3) (substantial discussion). Thus, only certain, specific actions taken by the candidate or the candidate's authorized committee or agents, as set forth in 11 CFR 109.21 and 109.37, result in the receipt or acceptance of an in-kind contribution arising from coordinated communication or a party coordinated communication. Only these received or accepted in-kind contributions are treated as expenditures made by the candidate. *See* 11 CFR 109.20(b) (requiring a candidate to report coordinated expenditures as expenditures); 109.21(b)(1) (requiring a candidate to report received or accepted coordinated communications as expenditures); 109.37(a)(3) (stating that candidates are not required to report as expenditures party coordinated communications that do not constitute received or accepted in-kind contributions). Coordinated communications or party coordinated communications that are *not* in-kind contributions received or accepted by the candidate, the candidate's authorized committee, or agents under 11 CFR 109.21(b)(2) or 109.37(a)(3) would *not* be subject to the candidate's expenditure limitation. The proposed rule also provides that the value of in-kind contributions would be the usual and normal charge for the goods and services provided.

Although coordinated party expenditures are made in connection with the general election campaign of a presidential candidate, they may be made prior to the date of the candidate's nomination, pursuant to 11 CFR 109.34. The Commission notes that to the extent coordinated expenditures are in excess of the coordinated party expenditure limitation at 11 CFR 109.32(a), they may be attributable to a presidential primary candidate's expenditure limitations based on the ''bright line'' rules at 11 CFR 9034.4(e) for attributing expenditures between the primary and general election spending limitations. For example, party coordinated communications broadcast prior to the date of the candidate's nomination may count against the presidential candidate's primary expenditure limitations. *See* 11 CFR 9034.4(e)(6). The Commission seeks comment on whether this is an appropriate conclusion.

The Commission is not specifically listing in the proposed rule the dissemination, distribution or republication of campaign material prepared by a candidate, which is governed by 11 CFR 109.23. Section 109.23(a) provides that the candidate who prepared the campaign materials does not receive or accept an in-kind contribution, and need not report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37. Thus, the cost of such campaign materials would not count against the candidate's expenditure limitations unless the candidate receives or accepts them as in-kind contributions in the form of coordinated communications or party coordinated communications. Since the proposed rules in 11 CFR 9035.1(a)(3) would specifically include received or accepted coordinated communications and party coordinated communications, a reference to the republication of campaign materials is unnecessary.

The Commission also notes that 11 CFR 109.32(a)(4) provides that any coordinated party expenditures made under section 109.32(a), which specifies the limitations for coordinated party expenditures in presidential elections, shall not count against the candidate's expenditure limitations; however, any coordinated expenditures by a political party in excess of the limitations at section 109.32(a) would count against the candidate's expenditure limitations. Thus, the proposed rule in 11 CFR 9035.1(a)(3) would not adversely affect the coordinated party expenditure limitations at 2 U.S.C. 441a(d)(2) because the proposed rule would only apply to amounts in excess of those limitations. The Commission seeks comment on whether this is an appropriate approach.

2. Revisions to 11 CFR 9038.2

The Commission also proposes to amend 11 CFR 9038.2(b)(2)(ii)(A) to clarify that repayment determinations for candidates who exceed the expenditure limitations will be based on expenditures made by a candidate, the candidate's authorized committees, or agents, either directly by disbursing campaign funds for expenditures, or indirectly by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3). The wording ''receive or accept'' in this section and in proposed section 9035.1(a)(3) is consistent with the terminology used in 11 CFR 109.21(b)(2), 11 CFR 109.23(a) and 11 CFR 109.37(a)(3) to ensure that any coordinated expenditures or republished campaign materials that are not considered ''received or accepted'' by a candidate would not count against the expenditure limitations or be subject to repayment.

B. In-Kind Contributions in the Repayment Ratio (11 CFR 9038.2(b)(2)(iii))

A related issue is the calculation of the repayment ratio. The current regulations at 11 CFR 9038.2(b)(2)(iii) provide for a ratio repayment of amounts used for nonqualified campaign expenses, which includes expenditures in excess of the spending limitations. *See* 11 CFR 9038.2(b)(2)(ii)(A). Paragraph (b)(2)(iii) currently states that the amount of a repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. ''Total deposits'' is defined

as all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts. 11 CFR 9038.3(c)(2). However, the current rules do not specifically include the value of in-kind contributions received or accepted in the calculation of the repayment ratio. Including in-kind contributions received or accepted in the calculation of the repayment ratio would reduce the resulting ratio to more accurately reflect the amount of public funds that are spent in excess of the expenditure limitations or used for other non-qualified campaign expenses.

The Commission proposes to revise 11 CFR 9038.2(b)(2)(iii) to include both total deposits and in-kind contributions received or accepted by the candidate or the candidate's authorized committee or agents in the calculation of the repayment ratio for non-qualified campaign expenses. In-kind contributions would be valued at the usual and normal charge for the goods and services provided to the candidate. The Commission requests comment on this proposed change.

C. Parallel Changes to General Election Rules (11 CFR 9004.4(b)(2) and 9007.2(b)(2))

The Commission is considering certain parallel changes to the rules governing the expenditure limitations and repayments for general election committees at 11 CFR 9004.4(b)(2) and 9007.2(b)(2), but is not including specific changes in the proposed rules at this time. The Commission notes that expenditures in excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a) may be in connection with the general election and attributable to a candidate's general election expenditure limitation under the ''bright line'' rules at 11 CFR 9034.4(e). The Commission also notes that general election candidates who receive the full public grant may not accept any contributions, including in-kind contributions, and must repay the entire amount of any in-kind contribution received. *See* 26 U.S.C. 9007(b)(3). The Commission seeks comment on whether changes similar to those proposed for primary candidates would be appropriate for general election candidates and on any other issues related to including in-kind contributions in a general election candidate's total expenditures.

III. GELAC Funds (11 CFR 9003.3(a))

A. Funds Remaining in the GELAC

The Commission proposes to revise its rules concerning the use of GELAC funds to update the permissible uses of GELAC funds consistent with BCRA. Currently, the rules at 11 CFR 9003.3(a)(2)(iv) state that if there are ''excess campaign funds'' after payment of all expenses set out in section 9003.3(a)(2)(i), such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

BCRA amended 2 U.S.C. 439a to eliminate its reference to ''excess campaign funds.'' The Commission revised 11 CFR part 113 accordingly. *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds,* 67 FR 76962, 76978–79 (Dec. 13, 2002). The Commission proposes to replace the reference to ''excess campaign funds'' in 11 CFR 9003.3(a)(2)(iv) with ''funds remaining in the GELAC'' in order to clarify that only funds that are not needed for GELAC expenses may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113.

The Commission also proposes revisions to 11 CFR 9003.3(a)(2)(iv) to more clearly state that GELAC funds must be not be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 until the completion of the audit and repayment process, which includes making any repayments owed. The Commission requests comments on these proposed changes.

B. Primary Repayments

The Commission is also considering whether candidates should be required to use GELAC funds to make any repayments arising from their primary campaigns, if the primary committee is unable to make the repayment, before the remaining funds in the GELAC could be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. Currently, GELAC funds may be used to make general election repayments. 11 CFR 9003.3(a)(2)(i)(D). Therefore, the Commission proposes revisions to 11 CFR 9003.3(a)(2)(i)(D) to specify that the GELAC may make repayments owed by the candidate's primary campaign committee pursuant to 11 CFR 9038.2 and 9038.3. Under this proposal, if a candidate's primary or general election committees do not have sufficient funds to make a repayment, the GELAC funds must be used to make the repayment before funds remaining in the GELAC may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. However, the proposed rule would not require that repayments must be made before other permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). These proposed amendments to the GELAC rules are based on the Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits contributions to be used ''for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual.'' This provision is sufficiently broad to encompass both primary repayments and the other limited purposes specified in 11 CFR 9003.3(a)(2)(i).

C. Solicitation of GELAC Funds

The Commission is also considering whether to revisit its rules regarding the solicitation and deposit of GELAC contributions prior to June 1 of the calendar year in which a presidential general election is held. The Commission is considering changing the June 1 date to an earlier date or abolishing the June 1 restriction. Under current 11 CFR 9003.3(a)(1)(i), prior to June 1 of the presidential election year, contributions may only be deposited in a GELAC if they are made for the primary election, exceed the contributor's contribution limit for the primary and are redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1. In addition, contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a presidential general election is held. 11 CFR 9003.3(a)(1)(i)(A). As a result of this regulation, although candidates are permitted to establish GELAC accounts at any time, they are barred from soliciting or accepting any direct contributions to the GELAC until five months before the general election.

The Commission revised this section in 1999 to establish the June 1 time limit. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49356–57 (Sept. 13, 1999). In the 1999 rulemaking, the Commission considered changes to ''address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination.'' *Id.* at 49356. One problem was that candidates who do not receive their party's nomination must refund contributions received by the GELAC, but difficulties arose if GELAC funds had been used to defray overhead or GELAC fundraising expenses. *Id.* Another problem was ensuring that the GELAC is not improperly used to make

primary election expenditures. *Id.* After considering several alternative approaches, the Commission decided to continue to permit GELACs to be established at any time but added the June 1 starting date for deposits other than excessive primary contributions and solicitations of contributions to the GELAC. *Id.* The Commission explained that it selected the June 1 date because ''barring unforeseen circumstances, this is the point when a party's prospective nominee can be reasonably assured that he or she will need to raise funds for a GELAC'' and the date gives prospective nominees ''sufficient time to raise the funds that will be needed.'' *Id.* The effective date of these regulatory amendments was June 1, 2000, which meant that the pre-June 1 solicitation prohibition was not operative for the 2000 election cycle.

The Commission seeks comment on whether it should delete this restriction or continue to use June 1 of the presidential election year as the starting date for GELAC solicitations and most deposits to a GELAC. Would an earlier date in the election year such as May 1 or April 1 be preferable, given that many presidential primaries have been moved to earlier dates? Should an earlier date be used for presidential candidates who run unopposed in the primaries or who have a reasonable certainty prior to June 1 of the election year that they will become their party's nominee? Should the starting date be eliminated? Are these restrictions required by, or consistent with, the FECA and the Fund Act?

D. Redesignation of Excessive Contributions and GELACs

In addition, the Commission proposes to revise the rules at 11 CFR 9003.3(a)(1) governing the sources of GELAC funds to reflect the Commission's recent changes to its rules at 11 CFR 110.1(b)(5)(ii)(B) concerning the redesignation of excessive contributions. *See Explanation and Justification for the Rules Governing Contribution Limitations and Prohibitions,* 67 FR 69928, 69930–32 (Nov. 19, 2002). The Commission revised 11 CFR 110.1(a)(5)(ii)(B) to allow authorized committees to redesignate primary contributions that would otherwise be excessive to the general election without obtaining a signed written document under certain circumstances. *Id.* at 69930. Specifically, the Commission simplified the redesignation of certain excessive contributions to a candidate's authorized committee made before a primary election, but not designated in writing for a particular election. *Id.* The Commission allowed the candidate's committee to presume that the contributor of such excessive contributions intended to contribute any excessive amount to that candidate's general election, without obtaining written permission from the contributor for the redesignation. *Id.* The Commission set forth several requirements for a committee to designate contributions by this presumption, including that the candidate's committee must be permitted to accept general election contributions. *Id.* The Commission explained that ''if a presidential candidate's authorized committee accepts public funding in the general election, the presumption is available to any such committees only to the extent they are permitted to accept contributions to a general election legal and accounting compliance fund.'' *Id.* at 69930–31.

Thus, 11 CFR 110.1(b)(5)(ii)(B) now allows the treasurer of the recipient candidate committee to treat all or part of an excessive primary contribution as made with respect to the general election, as long as it meets the following requirements: (1) The contribution was made before the primary election; (2) the contribution was not designated for a particular election; (3) the contribution would exceed the primary election contribution limitations if it were treated as a primary contribution; (4) the redesignation would not cause the contributor to exceed the contribution limitations; and (5) the treasurer provides a written notification to the contributor within 60 days of receipt of the contribution of the amount that was redesignated and that the contributor may request a refund.

Therefore, the Commission proposes to revise 11 CFR 9003.3(a)(1)(i), (a)(1)(i)(C) and (a)(1)(v) to permit publicly funded presidential candidates to presume that excessive contributors to primary campaigns would consent to the redesignation of their contributions to the candidate's GELAC. The proposed changes provide that excessive contributions may be placed in the GELAC if they are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1. The rule at 11 CFR 9003.3(a)(1)(i)(C) would provide that a contribution that meets the requirements of 11 CFR 110.1(b)(5)(ii)(B) would be considered designated for the GELAC. The proposed reference to 11 CFR 110.1(b)(5)(ii)(B) would incorporate the requirements of that section. The Commission notes that presumptively redesignated contributions to the GELAC, like all other contributions accepted for the GELAC, must be refunded within 60 days of a candidate's DOI if the candidate does not become the nominee. *See* 11 CFR 9003.3(a)(1)(i)(A). The recordkeeping requirements in 11 CFR 110.1(l) are separately addressed in section 9003.3(a)(1)(ii)(A)(*4*).

A related proposal, which is not included in the proposed rules that follow, would be to revise 11 CFR 9003.3 to expressly allow excessive contributions to a GELAC to be presumptively redesignated to a presidential candidate's authorized committee for the primary election, based on the conditions delineated at 11 CFR 110.1(b)(5)(ii)(C) for redesignation of excessive general contributions to a candidate's primary election. The Commission's rules at 11 CFR 110.1(b)(5)(ii)(C), like the rule for presumptive redesignations for a general election, allow authorized committees to redesignate general election contributions that would otherwise be excessive for the primary election without obtaining a signed written document under certain circumstances. *See* 67 FR 69931. Such presumptively redesignated contributions would be included in the calculation of a presidential primary candidate's NOCO but could not be submitted for matching because they are redesignated for a different election and the contributor lacked the donative intent to influence the primary election. *See* 11 CFR 9034.3(e) and (k).

The Commission seeks comment on these proposals. Should a different rule apply for redesignation of excessive contributions to or from a GELAC than for redesignations to or from the general election of candidates who do not accept public funds? Should such presumptive redesignations be subject to additional restrictions than those delineated at 11 CFR 110.1(b)(5)(ii)?

IV. Other Presidential Candidate Issues

A. Quarterly and Monthly Reporting Requirements (11 CFR 104.5(b)(2))

The Commission made a number of changes to its rules governing reporting when implementing BCRA's new reporting requirements. *Explanation and Justification for the Rules Governing Bipartisan Campaign Reform Act of 2002 Reporting,* 68 FR 404 (Jan. 3, 2003). One of these changes was revising 11 CFR 104.5(a) to set forth a new reporting schedule for principal campaign committees of House of Representatives and Senate candidates following BCRA's requirements that such candidates must file quarterly

reports in non-election years. *Id.* at 408 and 418. BCRA did not change the reporting schedule for the principal campaign committees or other authorized committees of presidential candidates; thus, 11 CFR 104.5(b)(2) was not changed. *Id.* Currently, principal campaign committees of presidential candidates may file campaign reports in non-election years on either a monthly or a quarterly basis. 2 U.S.C. 434(a)(3)(B); 11 CFR 104.5(b)(2) and 9006.2. However, the current rules do not explain how presidential candidates may change their reporting frequency during a non-election year from monthly to quarterly or *vice versa.* The rules governing unauthorized committees at 11 CFR 104.5(c) set forth requirements for such committees to change their reporting frequency, such as notifying the Commission of the change. The Commission is considering similar requirements for principal campaign committees of presidential candidates.

The Commission proposes to revise the rules at section 104.5(b)(2) to allow a principal campaign committee (''PCC'') of a presidential candidate to change its filing schedule in a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The PCC would then be required to file the next required report under its new filing frequency. In addition, a PCC could change its filing frequency no more than once in a calendar year. This approach is consistent with the requirements for unauthorized committees at 11 CFR 104.5(c). The Commission notes that presidential PCCs are not permitted to change their filing frequency during election years under 2 U.S.C. 434(a)(3)(A), except that a PCC that files quarterly reports shall begin filing monthly reports at the next reporting period after it receives contributions or makes expenditures in excess of $100,000. The Commission requests comments on this proposal.

B. Election Cycle Reporting—Matching Fund Submissions (11 CFR 9036.1(b)(1)(ii) and 9036.2(b)(1)(v))

In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized committees to aggregate, itemize, and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. 65 FR 42619 (July 11, 2000). The new rules, which reflect a 1999 amendment to 2 U.S.C. 434(b) (Pub. L. No. 106–58, 641, 113 Stat. 430, 477 (1999)), apply to reporting periods beginning on or after January 1, 2001. 65 FR 70644 (Nov. 27, 2000). Under these regulations, an election cycle begins on the first day after the date of the previous general election for the office the candidate seeks and ends on the date of the next general election for that office. The election cycle is thus four years for presidential candidates.

The Commission's rules regarding threshold submissions for matching funds currently require candidates to submit a contributor list including occupation and name of employer information for contributions from individuals aggregating in excess of $200 per calendar year. 11 CFR 9036.1(b)(1)(ii). Similarly, the rules for subsequent submissions at 11 CFR 9036.2(b)(1)(v) provide that the occupation and employer information need not be disclosed on the contributor list for contributions made by individuals aggregating in excess of $200 per calendar year, but such information is subject to the recordkeeping and reporting requirements. The Commission is proposing to revise 11 CFR 9036.1(b)(1)(ii) and 9036.2(b)(1)(v) to specify that the matching fund submission and recordkeeping requirements include occupation and employer information for those individuals who contribute more than $200 in an election cycle, rather than in a calendar year, to reflect the statutory change.

C. Billing the Press for the Costs of Reconfiguring an Aircraft (11 CFR 9004.6(a)(3) and 9034.6(a)(3))

The Commission's rules at 11 CFR 9004.6 and 9034.6 establish procedures for authorized committees to obtain reimbursement for transportation and other services that are provided to the media and the Secret Service over the course of a campaign. The current rules contain a non-exhaustive listing of such services, and state at 11 CFR 9004.6(a)(3) and 9034.6(a)(3) that presidential campaign committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office, in conjunction with the White House Correspondents' Association [''White House Manual'']. The reference to the White House Manual has been in the rule since 1999. *See Explanation and Justification for the Rules Governing Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Candidates,* 64 FR 42579, 42581–82 (Aug. 5, 1999). Expenses for which a committee receives no reimbursement are considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, are subject to the overall expenditure limitation. 11 CFR 9004.6(a)(2) and 9034.6(a)(2).

In the 1996 campaign, some committees incurred significant expenses to reconfigure campaign aircraft. The expenses included both interior work, such as equipment installation, and exterior work such as campaign logos. However, these expenses were not included in the White House Manual for 1996, which was not changed in 2000. The Commission is accordingly seeking comment on whether it is appropriate for campaign committees to obtain reimbursement for all or part of aircraft reconfiguration expenses from the media, and whether the rules should be revised accordingly. If so, which of these expenditures should be billed to the press? Are there other specific expenditures not included in the White House Manual for which reimbursement might also be appropriate? Given that the numbers of members of the press on each flight, or segment of each flight, will likely vary, comments are sought on the feasibility of determining the *pro rata* share for each person, where the reconfigured plane will make numerous flights, and that precise number is not known in advance. More broadly, the Commission seeks comment on whether the ability of committees to seek reimbursement from the media should be governed solely by what billable items are specified in the White House Manual, as current 11 CFR 9004.6(a)(3) and 9034.4(a)(3) require, or whether the Commission should consider other criteria, or enumerate the criteria in the regulations, or both. Please note that the draft rules that follow do not contain specific changes to 11 CFR 9004.6 or 9034.6.

D. Candidate Salary (11 CFR 9004.4(b)(6), 9034.4(b)(5))

The Commission recently revised its rules governing personal use of campaign funds at 11 CFR part 113 to implement BCRA's changes to 2 U.S.C. 439a. In that rulemaking, the Commission addressed the use of contributions to pay salaries to candidates and decided to allow campaign funds to be used for candidate salaries, including privately funded presidential candidates, under certain conditions delineated at 11 CFR 113.1(g)(1)(i)(I). *See Explanation and Justification for the Rules Governing Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of*

Campaign Funds, 67 FR 76962, 76971–73 (Dec. 13, 2002). The Explanation and Justification for 11 CFR 113.1(g) stated that a salary payment to a candidate from campaign funds would be considered personal use if the salary payment is ''in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency.'' *Id.* The new rules, however, do not specifically state whether or not publicly funded presidential candidates may receive salaries from their campaigns. The Commission noted that a candidate's salary is a non-qualified campaign expense under 11 CFR 9004.4(b) and 9034.4(b), *see also* 11 CFR 9002.11 and 9032.9. *Id.* at 76972.

Currently, the rules at 11 CFR 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a candidate by the candidate's committee, other than to reimburse funds advanced by the candidate, are non-qualified campaign expenses. In promulgating these rules in 1987, the Commission explained that ''no payments may be made to the candidate from accounts containing public funds'' except for reimbursements, and candidates ''may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning.'' *See Explanation and Justification for the Rules on Public Financing of Presidential Primary and General Election Candidates,* 52 FR 20864, 20866 and 20870 (June 3, 1987).

The Commission is considering whether to revise its rules to allow publicly funded general election and primary presidential candidates to receive salary payments paid for, in whole or part, with public funds. Thus, salary payments to candidates would be considered qualified campaign expenses. The Commission is considering allowing salary payments to be paid to publicly funded candidates under similar conditions to those for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I). Thus, the candidate's publicly funded principal campaign committee would be permitted to make salary payments to the candidate. Salary payments to publicly funded candidates would be permissible beginning on January 1 of the calendar year prior to the presidential election year or the filing of the candidate's statement of candidacy, whichever is later. This earlier starting date than the time restrictions for other Federal candidates would recognize that the presidential primary campaign begins before the presidential election year. Salary payments paid by the candidate's primary committee would be permitted through the candidate's date of ineligibility and salary payments from a candidate's general election committee would begin on the date of nomination and end on the date of the general election. Only non-incumbent presidential candidates who are not currently Federal officeholders would be able to receive a salary paid with public funds.

Candidates who hold office in a State would be able to receive salary payments only to the extent they are permitted to do so under the laws of that State. Salary payments would be limited to the lesser of the annual salary paid to the President or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income the candidate would receive from salaries or wages from any other source would count against the salary limitation. In addition, the candidate would be required to provide income tax records for the relevant year and other evidence of earned income upon request by the Commission. Finally, salary payments could be made only on a pro rata basis.

The Commission seeks comment on this approach, but no specific provision is proposed in the draft rules that follow. Should candidate salary be considered a qualified campaign expense payable with public funds or should candidate salaries for publicly funded candidates continue to be considered non-qualified campaign expenses? Would candidates avail themselves of a salary paid with public funds? Would the proposed change encourage candidates of modest means who depend on their earned income to run for the Presidency? Is this an appropriate use for public funds, and is there a potential for abuse? Should any additional restrictions on candidate salaries apply to publicly funded candidates?

Should payments of salary to candidates who receive public funds be prohibited so that in addition to the committee being required to repay the public funds involved, the candidate would violate 2 U.S.C. 439a by accepting the salary payments? Should the candidate and committee agreements described in 11 CFR 9003.1 and 9033.1 contain a provision agreeing that no salary would be paid to the candidate?

E. Gifts and Bonuses (11 CFR 9004.4(a)(5) and 9034.4(a)(5))

The Commission is considering revisiting its rules governing payment of gifts and bonuses by primary and general election candidates at current 11 CFR 9004.4(a)(5) and 9034.4(a)(5). The current rules allow gifts and bonuses to be treated as qualified campaign expenses if they meet certain restrictions. Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services are limited to $150 per individual recipient and a total of $20,000 for all gifts. 11 CFR 9004.4(a)(5) and 9034.4(a)(5). Monetary bonuses for employees and consultants in recognition for campaign-related activities or services must be provided for pursuant to a written contract made prior to the general election for general election candidates or the DOI for primary candidates and must be paid no later than 30 days after the DOI for primary candidates or the end of the expenditure report period for general election candidates. *Id.*

The Commission has not proposed any changes to these rules in the draft rules that follow, but seeks comment on the current rules. Should the Commission maintain its current rules on gifts and bonuses? Should the current restrictions on gifts and bonuses be strengthened, reduced, or eliminated? Should the permissible dollar amounts for gifts to individuals or the total amounts of gifts be lowered, or raised? Should the requirement of a written contract be clarified to delineate what constitutes an acceptable written agreement? Is the requirement of a written contract for monetary bonuses too restrictive, since written contracts are not required for salary payments? Should additional restrictions be added, such as limiting the amount of bonuses or requiring committees to provide other documentation of the reasons for the bonus such as the type and amount of work performed? What additional, or different, controls should be used for gifts and bonuses? Should candidates be required to sign any contracts that include employment bonus provisions? This would ensure that high-level campaign officials do not engage in self-dealing. If the current restrictions are deleted from the rules, how should the Commission ensure that gifts and bonuses comply with the restrictions on personal use of campaign funds at 2 U.S.C. 439a and 11 CFR part 113?

In addition, should changes also be made to current 11 CFR 9008.7(a)(4)(xii) to make the rule for convention committees more similar to the rules for candidates by including the same requirements for bonuses? Currently 11 CFR 9008.7(a)(4)(xii) limits all gifts and monetary bonuses to national committee or convention committee employees, volunteers and convention officials to $150 per individual or a total of $20,000 for all gifts.

F. Shortfall Exemption (11 CFR 9035.1(c))

During recent election cycles, the Presidential Primary Matching Payment Account has occasionally experienced a shortfall in that it contained insufficient funds to fully pay all of the matching funds to which primary candidates were entitled on the dates payments were due. *See* 26 U.S.C. 9037; 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The delay or deficiency in matching fund payments has resulted in inconvenience and additional costs for candidates such as the costs of obtaining bridge loans from banks to pay for their expenses until they received their full entitlement of matching funds several months later. Such expenses currently count against a candidate's overall expenditure limitation, reducing the amount the candidate may spend on other campaign activities.

In order to mitigate the effect of a potential shortfall on candidates, the Commission proposes a new ''shortfall exemption'' from a primary candidate's overall expenditure limitation at new paragraph 11 CFR 9035.1(c)(3). This new exemption would equal 5% of the amount of any delayed or deficient payment of matching funds to which the candidate is entitled.

The Commission seeks comment on this proposal. To what extent would the proposed exemption ameliorate the negative impact of delayed or deficient payments of matching funds on a primary candidate's campaign? Should a different percentage be used? Would this exemption be workable for candidates? Is this exemption a permissible interpretation of the statutory spending limit?

G. Expenditures by a Multicandidate Political Committee for Qualified Campaign Expenses of a Candidate (Proposed 11 CFR 110.2(l) and 9034.10)

In December 2002, the Commission published an NPRM entitled ''Leadership PACs'' seeking comment on its proposal to promulgate new regulations addressing this specific type of multicandidate political committee. The Commission conducted a public hearing on February 26, 2003, to discuss the NPRM. During the public hearing, the issue of leadership PACs paying for qualified campaign expenses of potential Presidential candidates during the ''testing the waters'' stage was raised and discussed. Because this issue implicates the regulations addressing Presidential campaigns and elections, the Commission has decided to seek comment on the relationship, if any, between multicandidate political committees and Presidential candidates in this NPRM. The Commission is continuing to review the Leadership PACs NPRM as it applies outside Presidential campaigns and elections, and the comments received in connection with the NPRM, and the Commission intends to conclude that rulemaking at a later date.

The proposed rules herein would create a new paragraph in 11 CFR 110.2 and a new section in 11 CFR part 9034 that would address the payment by a multicandidate political committee of a qualified campaign expense of a Presidential candidate. Proposed section 110.2(l) would apply to candidates who are not accepting public funding from the Presidential Election Campaign Fund for the primary or general election. Proposed 11 CFR 9034.10 would apply to Presidential candidates who are accepting public funding for the primary election. Because Presidential candidates who accept public funding for the general election may not accept contributions from multicandidate political committees, the proposed rules would not include a parallel provision in 11 CFR subchapter E.

1. Scope of the Proposed Rules

Proposed 11 CFR 110.2(l) and 9034.10 would be applicable to all multicandidate political committees, not just those commonly known as Leadership PACs. The rationale for this approach is that leadership PACs are not defined or specifically addressed in FECA or in the current Commission regulations. Rather, leadership PACs are formed as multicandidate political committees that are defined and addressed in FECA and current Commission regulations. In the Commission's experience, other types of multicandidate political committees do not make expenditures for qualified campaign expenses of potential Presidential candidates. Thus, including all multicandidate political committees within the proposed rules would not have unintended consequences of encompassing other types of activity.

Nevertheless, the Commission seeks comment on whether the proposed rules should be limited to leadership PACs. If the Commission were to adopt such an approach, it would also become necessary for the Commission to adopt a definition for ''leadership PACs.'' Consequently, the Commission seeks comment as to what that definition should be.

2. Definition of ''Qualified Campaign Expense''

Proposed 11 CFR 9034.10(a) would include a definition of ''qualified campaign expense'' that would vary from the current definition in 11 CFR 9032.9 but would limit the scope of the proposed definition to proposed 11 CFR 9034.10. The definition in proposed paragraph (a) would adopt language similar to that of 11 CFR 9032.9(a) but would not include the timing element of section 9032.9(a)(1). The timing element of current section 9032.9(a)(1), which limits qualified campaign expenses to expenses incurred between the date a person becomes a candidate and the last day of the candidate's eligibility, should not be applied here because a major goal of the proposed rules is to treat qualified campaign expenses that are paid by multi-candidate committees as in-kind contributions to Presidential candidates whenever such qualified campaign expenses are incurred, even if they are incurred prior to the date a person becomes a candidate.

Additionally, the proposed definition would not include the provisions in section 9032.9(a)(3) requiring that a qualified campaign expense comply with all Federal, state, and local laws. The purpose of this provision in section 9032.9(a)(3) is to prevent the authorized committees from paying for items such as parking tickets. Because the purpose of proposed section 9034.10 is to treat the payment of qualified campaign expenses of a Presidential candidate by multicandidate political committees as in-kind contributions, it would be inconsistent with this purpose to exclude these items.

Proposed 11 CFR 9034.10(a)(1) and (2) would be the operative definition of ''qualified campaign expense'' as it would be applied to proposed 11 CFR 110.2(l) and 9034.10. Under the proposed definition, ''qualified campaign expense'' would mean purchase, payment, etc, that is incurred by, on behalf of, or for the benefit of a candidate or the candidate's authorized committee and is made in connection with that candidate's campaign for nomination. Proposed paragraph (a)(3) would provide a non-exhaustive list of examples of expenses that would be considered as a qualified campaign expense, such as polling expenses, staff salary, travel, and office space expenses. The Commission seeks comment on whether polling expenses in proposed paragraph (a)(3)(i) should be limited to polls that reference a Presidential candidate. The Commission notes that none of the foregoing expenses would be qualified campaign expenses under

the proposed rule unless they were made in connection with a Presidential candidate's campaign for nomination. The Commission seeks comment on whether more specific examples of qualified campaign expenses should be provided and whether there are other expenses that should be included in proposed paragraph (a)(3). The Commission also seeks comments on whether it should use a terminology other than ''qualified campaign expenses'' in this proposed section to avoid confusion with the current definition of ''qualified campaign expenses.''

3. Qualified Campaign Expenses as In-Kind Contributions

The NPRM would set forth the consequences of a multicandidate committee paying for qualified campaign expenses for a Presidential candidate in proposed 11 CFR 9034.10(b)(1) through (4). The introductory language of proposed paragraph (b) would limit the ''look back'' period of the proposed rules to January 1 of the year immediately following the last Presidential election year. Thus, if an expenditure made by a multi-candidate committee for a qualified campaign expense were made prior to that date, it would not be subject to the provisions of proposed section 9034.10. The Commission seeks comments on whether the ''look back'' period should start at a different date, such as the day after the last Presidential election or some other date. Additionally, the proposed rule would only apply to qualified campaign expenses paid by multi-candidate committees for individuals who actually become Presidential candidates.

Under the proposed rule, an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate would have four effects. First, the expenditure would be deemed as an in-kind contribution from the multicandidate political committee to the Presidential candidate under proposed 11 CFR 9034.10(b)(1). Second, proposed paragraph (b)(2) would subject the expenditure/contribution to the contribution limitations for multicandidate political committees to Presidential candidates, *i.e.* $5000 per election. Third, under proposed paragraph (b)(3), the expenditure would count towards the expenditure limitations for Presidential candidates accepting public funding under 11 CFR part 9035. Finally, proposed paragraph (b)(4) would subject the expenditure to the audit provision of 11 CFR 9038.1. The proposed rules would also amend current 11 CFR 9038.1(a)(2) to make clear that multicandidate political committees that make expenditures for qualified campaign expenses would be subject to examinations and audits as deemed necessary. The Commission seeks comments on whether changes to the audit provision of 11 CFR 9038.1 is appropriate or necessary to effectuate any new rule it may promulgate in this area. It is important to note that, under this proposed rule, coordination would not be relevant in determining that a multicandidate political committee has made an in-kind contribution when it pays for a qualified campaign expense of a Presidential candidate.

As stated above, proposed 11 CFR 9034.10(b)(2) would subject a multicandidate political committee's expenditure for qualified campaign expenses to the contribution limitations that apply to Presidential campaign committees. Under proposed paragraph (c), any amount of the expenditure that exceeds the contribution limit for multicandidate political committees to Presidential candidate committees would be deemed an excessive contribution and liability would attach to both the multicandidate political committee for making the excessive contribution and the authorized committee of the Presidential candidate for accepting an excessive contribution. The Commission seeks comment on whether the proposed rules should include a provision that would allow the authorized committee to ''cure'' the excessive contribution and, therefore, avoid liability. For instance, if the authorized committee of the Presidential candidate reimburses the multicandidate political committee for any expenditure for qualified campaign expenses that exceed the contribution limit within thirty days of the date of the person becoming a candidate, should these expenditures not be considered as excessive contributions? The Commission seeks comment on this approach or suggestions on alternative ways excessive contributions may be ''cured.''

While proposed 11 CFR 9034.10 would apply to Presidential candidates who accept public funding for their primary election campaigns, the proposed rules would add a new paragraph (l) to current section 110.2 that would apply to Presidential candidates who do not accept any public funds. Proposed 11 CFR 110.2(l)(1) would incorporate by reference the definition of ''qualified campaign expense'' in proposed section 9034.10(a) for purposes of proposed paragraph (l). Proposed paragraph (l)(2) would include the same ''look back'' period as proposed section 9034.10(b).

Similar to proposed section 9034.10(b)(1) and (2), an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate who is not receiving public funds would be deemed to be an in-kind contribution from the multicandidate political committee to the Presidential candidate and that contribution would be subject to the relevant contribution limitations. Proposed 11 CFR 110.2(l)(1) and (2). Proposed section 110.2(l) would not have provisions that parallel proposed section 9034.10(b)(3) and (4) because Presidential candidates who do not receive public funding for their campaigns are not subject to the expenditure limitations in 11 CFR part 9035 or the audit provisions of 11 CFR 9038.1. Proposed 11 CFR 110.2(l)(3) would include similar language as proposed section 9034.10(c) stating that expenditures exceeding the contribution limits for multicandidate political committees to Presidential candidates would be deemed as excessive contributions.

The Commission seeks comment on this proposal to treat expenditures by multicandidate committees for qualified campaign expenses of Presidential candidates as in-kind contributions. The Commission also welcomes comments on the ramifications of such treatment as well as on the issues raised above.

H. Technical Amendments

1. Word Omitted From 11 CFR 9038.2(b)(4)

Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income derived from an investment or other use of surplus public funds after a candidate's DOI, less Federal, State and local taxes paid on that income, shall be paid to the Federal Treasury. However, the word ''taxes'' was inadvertently dropped from that paragraph and needs to be included.

2. Correcting Citations in 11 CFR 104.5(b)(1)

The Commission proposes to correct several citations in 11 CFR 104.5(b)(1) to reflect changes to 11 CFR 104.5(a) promulgated in the implementation of BCRA. Specifically, the Commission proposes in 11 CFR 104.5(b)(1)(i)(C) to change the reference to 11 CFR 104.5(a)(1)(i) to ''paragraph (a)(2)(i) of this section'' and to change the reference to 11 CFR 104.5(a)(1)(ii) to ''paragraph (a)(2)(ii) of this section.'' In 11 CFR 104.5(b)(1)(ii), the Commission proposes to change the reference to 11

CFR 104.5(a)(1) to ''paragraphs (a)(1) and (2) of this section''.

3. Private Contributions Received After DOI (11 CFR 9034.4(a)(3)(ii))

The Commission proposes to revise 11 CFR 9034.4(a)(3)(ii) to clarify the rules governing ineligible primary election presidential candidates who continue to campaign after their dates of ineligibility. Currently, paragraph (a)(3)(ii) provides that these candidates may use contributions received after the DOI to campaign. However, current 11 CFR 9034.5(a)(2)(i) provides that a candidate's cash on hand on the NOCO Statement should include ''all contributions dated on or before'' the DOI, whether or not submitted for matching. Thus, the current rules do not make clear how contributions should be treated that are made or dated before the DOI but received after the DOI by a candidate who continues to campaign. The proposed rules would clarify that each contribution made, dated, and received after a candidate's DOI may be used to continue to campaign.

In addition, the Commission proposes to delete the next sentence in section 9034.4(a)(3)(ii), which states: ''The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility.'' In practice, each submission for matching funds is reviewed individually; thus, a candidate receives a different proportion of matching funds for each submission. The Commission proposes deleting the sentence to make clear that candidates would continue to receive matching funds based on the Commission's review of each matching fund submission, rather than on the proportion of matching funds the candidate received for any previous submission.

4. Clarification of 11 CFR 9032.9(c)

Current 11 CFR 9032.9(c) states that expenditures incurred ''before the beginning of the expenditure report period'' are qualified campaign expenses if they meet the requirements of 11 CFR 9034.4(a), which addresses, *inter alia,* testing the waters expenses prior to the date an individual becomes a candidate. This wording is the same as the equivalent rule for general election candidates at 11 CFR 9002.11(c), and appears to be an error because the term ''expenditure report period'' applies to general election candidates. *See* 11 CFR 9002.12. To clarify this section, the Commission proposes changing this wording to ''prior to the date the individual becomes a candidate,'' the same wording used in 11 CFR 9034.4(a)(2), governing testing the waters expenses.

5. Documentation of Disbursements

The current rules describe the requirements for the documentation of disbursements applicable to all committees in 11 CFR 102.9(b) and provide additional documentation requirements for publicly funded committees at 11 CFR 9003.5 (general election candidates), 9008.10 (convention committees) and 9033.11 (primary candidates). The Commission proposes to revise 11 CFR 9003.5, 9008.10 and 9033.11 to clarify that publicly funded candidates must comply with both the general rules at section 102.9(b) and the particular rules applicable to publicly funded primary or general election candidates governing the documentation of disbursements. The proposed rules would add new paragraphs 11 CFR 9003.5(b)(4) and 9033.11(b)(4) stating that the requirements of section 102.9(b) also apply to disbursements, and would revise the introductory language in section 9008.10 to state that the requirements in that section are in addition to the requirements of 11 CFR 102.9(b). Adding these proposed references to 11 CFR 102.9(b) would improve the ease of use of the rules for publicly funded committees.

National Nominating Conventions

The Commission is proposing a number of changes to its regulations concerning national nominating conventions, 11 CFR part 9008. Some of these proposed changes are necessary in order to give effect to BCRA's ban on the use of non-Federal funds by national party committees. The rest of the proposed changes are designed to clarify certain requirements in light of the Commission's experience in administering the public financing of national nominating conventions over the past several presidential election cycles.

I. Current Legal Structure of Convention Financing

Under 26 U.S.C. 9008(b), the national committees of both major and minor political parties are entitled to public funds to defray expenses incurred in connection with a presidential nominating convention. Major party committees receive an inflation-adjusted payment from the Presidential Election Campaign Fund for their national nominating conventions. 26 U.S.C. 9008(b)(1). Minor party committees receive a proportional amount of that payment based on the number of votes the party's candidate received in the last presidential election compared to the average number of votes received by the major party candidates. 26 U.S.C. 9008(b)(2). For the 2004 conventions, the major party committees will be entitled to receive $14,880,000 in July 2003 and an additional payment in 2004 for an inflation adjustment, subject to all applicable requirements.[2] A national committee of a major or minor party may not make expenditures related to the convention that exceed the expenditure limitations, which are equal to the full amount of the payment to major parties. 26 U.S.C. 9008(d). Thus, the major party convention committees may not receive *any* contributions, as defined in 2 U.S.C. 431(8), that would count towards their expenditure limit if they accepted the full payment. Any such contributions would combine with the public funds to make total expenditures exceed the limit.

In addition to the public funds provided to the national committees of both major and minor political parties in connection with a presidential nominating convention, ''host committees'' and ''municipal funds'' may defray certain expenses incurred in connection with hosting these conventions. A host committee is defined as any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau (1) which is not organized for profit; (2) whose net earnings do not inure to the benefit of any private shareholder or individual; and (3) whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. 11 CFR 9008.52(a). Host committees may provide the convention committees with certain services and facilities, as specified in 11 CFR 9008.52(c). Any host committee expenditures that comply with 11 CFR 9008.52 do not constitute convention committee expenditures and do not count toward the convention committee's expenditure limit. 11 CFR 9008.8(b)(1).

''Municipal fund'' is the term that has come to apply to local government agencies and the separate funds or accounts established by them to receive and disburse funds in order to defray

[2] In 2000, the Democratic and Republican National Committees each received $13,512,000 for their national nominating convention, while the Reform Party received $2,522,690. No candidate received a sufficient number of votes in the 2000 presidential general election to provide his or her party with minor party status in 2004.

certain expenses for a convention in that locality. Municipal funds may make expenditures for the same purposes as host committees. 11 CFR 9008.53. As with host committees, expenditures by a municipal fund that are in compliance with 11 CFR 9008.53 do not constitute convention committee expenditures and do not count toward the convention committee's expenditure limit. 11 CFR 9008.8(b)(2).

Under current regulations, host committees and municipal funds are allowed to accept monetary and in-kind donations from the same sources: local businesses, including corporations; local banks; local labor organizations; and local individuals. 11 CFR 9008.52 and 9008.53. Municipal funds, however, face more limitations on their fundraising than host committees. *See* 11 CFR 9008.53(b)(1)(i) and (ii). Municipal funds may not accept donations ''restricted'' for use in connection with a particular convention; they may not engage in fundraising restricted to a particular convention; and they may not themselves be restricted to a particular convention. 11 CFR 9008.53(b)(1)(i) and (ii). Host committees are not subject to any of these limitations. Once raised, funds received by a host committee or municipal fund may be used for the same purposes. *See* 11 CFR 9008.52(c)(1) and 9008.53. If the funds are raised and spent in compliance with 11 CFR 9008.52 or 9008.53, then they are exempt from the definition of ''contribution and expenditure'' in the Commission's regulations concerning corporate and labor organization funds, 11 CFR part 114. *See* 11 CFR 114.1(a)(2)(viii). On this basis, host committees and municipal funds accept and spend such funds, which constitute non-Federal funds.

II. Historical Basis for Current Legal Structure

In 1977, the Commission explained the basis for permitting in-kind contributions to host committees from corporations and labor organizations, stating: ''Such in-kind contributions are presumably not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city.'' *Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971,* H.R. Doc. No. 95–44, 136 (1977). Similarly, donations of money were described as ''presumably commercially motivated rather than politically, and thus will not be considered an unlawful contribution.'' *Id.* at 137. Host committee funds were ''to be used for purposes designed to promote a good image of the host city to the convention attendees.'' *Id.* at 136–37.

The Commission acknowledged that the host committee exception to the convention committee's expenditure limit could be considered a means of avoiding the expenditure limit. *Id.* at 137. The Commission explained that ''it appears from the testimony of the major parties before the Commission that the Congress in deciding upon a dollar figure for expenditure limitations, took into consideration only those expenses actually paid by the national party for the 1972 convention and ignored in its computation the value of services provided by host cities and committees.'' *Id.* The Commission described its regulation on the use of funds by host committees as ''represent[ing] an interpretation of 26 U.S.C. 9008(1) that the [expenditure] limit applies only to expenditures made *by the national party,* and that expenditures made *by private host committees* under certain restrictions will not be counted toward the ceiling.'' *Id.* (emphasis in original).

In 1979, the Commission recodified some of its regulations, including those related to corporate donations to host committees. The Commission described again the basis for this exception to the prohibition on corporate and labor organization funds in 2 U.S.C. 441b, stating: ''While incorporated businesses are prohibited by 2 U.S.C. 441b from making contributions or expenditures in connection with a Federal election, donations by such corporations to a host committee in accordance with restrictions set forth in [11 CFR 9008.7(d) (1979)] are sufficiently akin to commercial transactions to fall outside the scope of that prohibition.'' *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,* 44 FR 63036, 63038 (Nov. 1, 1979).

The basis for the municipal fund exception to the expenditure limit was also discussed, and the Commission explained that the expenditure limit would be ''unrealistically low'' if the value of ''certain facilities and services'' provided by the city ''as part of an overall package to attract the convention to that city'' counted toward the convention committee's expenditure limit. *Id.* at 63037. With regard to host committees, the Commission justified the restriction on who may donate funds as ''necessary to insure that such donations are commercially, rather than politically motivated.'' *Id.* at 63038.[3] The Commission also observed that ''Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses.'' *See id.* at 63038. The 1979 document made the same point about the apparent Congressional intent as presented in the 1977 Explanation and Justification. *Id.* at 63037.

In 1994, the Commission again revised its regulations governing publicly financed presidential nominating conventions. Incorporating the conclusions reached in Advisory Opinions 1982–27 and 1983–29, the Commission promulgated its municipal fund regulation, 11 CFR 9008.53. *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,* 59 FR 33606, 33614 (June 29, 1994). Like donations to host committees, the Commission explained that ''the new rules recognize that local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes.'' *Id.* at 33615.

Five years later, in 1999, the Commission reiterated the presumed motivation of donors to host committees and municipal funds. In lifting the prohibition on bank donations to host committees, the Commission agreed with the observation that ''local branches of national banks have the same interest in promoting the city and supporting commerce'' as local corporations. *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49357 (Sept. 13, 1999).

III. Petition for Rulemaking

A petition for rulemaking jointly filed by three organizations seeks the repeal or revision of the Commission's regulations that permit host committees to accept corporate and labor organization funds and to use these funds for expenses incurred in conducting a nominating convention. The petition argues that the host committee regulation, 11 CFR 9008.52, and the exemption from the part 114 definition of ''contribution and expenditure'' of activity permitted by the host committee regulation, 11 CFR 114.1(a)(2)(viii), are contrary to FECA and BCRA. According to the petition, 2 U.S.C. 441b of FECA is violated by the

[3] At that time, the amount of donations to host committees was also limited. *See* 11 CFR 9008.7(d)(3)(ii) (1980).

cited regulations because corporations and labor organizations are permitted to contribute funds and in-kind contributions in connection with a nominating convention. Similarly, according to the petition, 2 U.S.C. 441i of BCRA is violated by 11 CFR 9008.52(c) because it allows national party committees to receive in-kind contributions paid for with corporate and labor organization funds. In support of its position, the petition puts forth a statutory and regulatory analysis, and it cites and attaches many articles from various media outlets that purport to describe convention financing practices. The petition is available on the Commission's website.

The petition's conclusion that the cited host committee regulations violate FECA and BCRA obviously contradicts the Commission's treatment of host committees since 1977. The proposed rules that follow are consistent with the Commission's historical treatment of host committees and do not reflect the position advanced by the petitioners. Nonetheless, the Commission seeks comment on whether corporate or labor organization donations to host committees under the conditions prescribed in current 11 CFR 9008.52(c) are contrary to FECA or BCRA. If the approach sought by the petition were adopted, the Commission also seeks comment on whether the exemption from the convention committee expenditure limit for host committee expenses, 11 CFR 9008.8(b)(1), should also be repealed. Similarly, the Commission also seeks comment on whether corresponding changes would be required for the municipal fund regulations, 11 CFR 9008.8(b)(2) and 9008.53.

IV. Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host Committees and Municipal Funds

Under BCRA, ''[a] national committee of a political party * * * may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [FECA].'' 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are ''directly or indirectly established, financed, maintained, or controlled'' by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2); *see also* 11 CFR 300.10(c)(1) and 300.10(c)(2). BCRA also prohibits Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(A); *see also* 11 CFR 300.61.[4]

The Commission has promulgated rules implementing BCRA's new restrictions and prohibitions on the receipt, solicitation, direction, and use of certain types of non-Federal funds by political party committees, candidates, and officeholders. *See Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,* 67 FR 49064 (July 29, 2002) (hereinafter ''Non-Federal Funds Final Rules''). In this rulemaking, the Commission considers the impact of these new restrictions and prohibitions in BCRA and the Non-Federal Funds Final Rules on national nominating conventions. Specifically, the Commission considers the roles filled by national political party committees, their convention committees, host committees, and municipal funds, as well as the involvement of Federal candidates and officeholders.

A. Are Host Committees and Municipal Funds ''Agents'' of National Party Committees Under 2 U.S.C. 441i(a) and (e) and 11 CFR 300.2(b)?

One issue that arises from BCRA's ban on national parties soliciting, receiving, directing, and using non-Federal funds is whether host committees and municipal funds are ''agents'' of national party committees. In the Non-Federal Funds Final Rules, the Commission defined an ''agent,'' for purposes of 11 CFR part 300, as ''any person who has actual authority, either express or implied * * * to solicit, direct, or receive any contribution, donation, or transfer of funds'' on behalf of a national committee of a political party. 11 CFR 300.2(b). The Commission seeks comment on whether host committees and municipal funds satisfy the definition of ''agents'' in 11 CFR 300.2(b) with respect to the national political party committees or their convention committees. If host committees and municipal funds are ''agents'' of national party committees, then they, like the national party committees themselves, would be prohibited from soliciting, receiving, directing, or spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1) and (2) and 11 CFR 300.10(a) and (c)(1).

The Commission does not propose regulatory text that would presume that host committees or municipal funds would necessarily qualify as ''agents'' of the national political parties. This approach, if adopted, would not preclude the Commission from determining that in a particular case a host committee or municipal fund does, in fact, meet the definition of ''agent'' in 11 CFR 300.2(b) with respect to the pertinent national party committee. The Commission also seeks comment on whether host committees and municipal funds should be treated *per se* as not agents of national party committees and, therefore, as not subject as a matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1) as agents acting on behalf of a national party committee, no matter how such host committees and municipal funds operate or interact with the national party committees.

The Commission is also considering an alternative approach, whereby host committees and municipal funds would be treated as *per se* agents of national party committees. Such an approach would limit permissible funds for a host committee or municipal fund to funds subject to FECA's limitations, prohibitions, and reporting requirements, regardless of how the host committees and municipal funds functioned and related to the national party committees. If the Commission were to consider host committees and municipal funds as *per se* agents of convention committees, how should it restructure the rules relating to national nominating conventions in 11 CFR part 9008? Would host committees or municipal funds be Federal political committees? Would all their transactions with convention committees amount to in-kind contributions? If host committees and municipal funds are limited to funds subject to FECA's limitations, prohibitions, and reporting requirements, should any uses of such funds be exempt from the convention committee's expenditure limit? The Commission recognizes that host committees and municipal funds supplement the funds that are otherwise capped by the expenditure limit and therefore removing the exemption from the expenditure limit for host committees and municipal funds would have a profound impact on convention financing. The Commission seeks comment on whether such a result is mandated by BCRA.

[4] In connection with any election other than an election for Federal office, BCRA also prohibits the same persons from soliciting, receiving, directing, transferring, spending, or disbursing funds in excess of the amounts permitted under 2 U.S.C. 441a(a) or funds from sources prohibited by FECA. 2 U.S.C. 441i(e)(1)(B).

The legislative debates of BCRA suggest that BCRA would entail significant changes in convention financing. During the Senate's consideration of BCRA, Senator Mitch McConnell said the bill ''will end national party conventions as we have known them.'' 148 CR S2122 (daily ed. Mar. 20, 2002). Senator McConnell went on to state that ''[t]he soft money ban covers the committees that are created to host these grand events'' and to say that post-BCRA conventions would have to be put on with ''80 percent less funding.'' *Id.* Senator McConnell's conclusion that passage of BCRA would mean: ''All the soft money that you used to put on the convention the last time is now gone.'' *Id.* Senator Fred Thompson earlier that day described ''the nature of the problem'' addressed by BCRA and noted in regard to what he called the ''big outfits'' that donate non-Federal funds ''the same entities pick up our expenses for the convention.'' 148 CR S2110 (daily ed. Mar. 20, 2002). During Senate consideration of an earlier version of BCRA, Senator Robert Bennett stated: ''One very practical example that we can expect is the scaling down, if not the elimination, of party conventions because party conventions now are financed entirely with soft money which, under this bill, would become illegal. So we may see party conventions disappear altogether, or we may see them become very truncated affairs, which the media may decide is not worth covering.'' 147 CR S3092 (daily ed. Mar. 29, 2001). Senator McConnell raised the issue during this earlier consideration as well. He stated: ''Host committees for national conventions are abolished. Last year it took each party $80 million to put on their national conventions. They got $15 million from the Treasury. All the rest of it was this odious soft money which is going to be abolished. In order to continue to put on the national conventions in hard dollars, the two committees will have to come up with about $60 million each in hard dollars to put on the national conventions.'' 147 CR S3234 (Apr. 2, 2001). The Commission seeks comment on how these debates or any other legislative history on this issue should be interpreted.

What effect does BCRA's non-Federal funds ban have on the rules relating to convention financing? Can the Commission simply retain the pre-BCRA rules? Is there legal justification for retaining the pre-BCRA rules? Does BCRA have any impact on the convention committee expenditure limit? Would limiting host committees and municipal funds to Federal funds have as significant an impact on convention financing as eliminating the expenditure limit exemption for host committees and municipal funds? If so, is such a result required by BCRA?

B. Are Host Committees and Municipal Funds Entities ''Established, Financed, Maintained, or Controlled'' by National Party Committees Under 2 U.S.C. 441i(a) and 11 CFR 300.2(c)?

Another issue that arises under BCRA is whether host committees and municipal funds are ''directly or indirectly established, financed, maintained, or controlled'' by a national party committee. If host committees and municipal funds are considered entities directly or indirectly established, financed, maintained, or controlled by the national party committees, then they, like the national party committees themselves, are prohibited from soliciting, receiving, directing, or spending non-Federal funds. 2 U.S.C. 441i(a)(2); 11 CFR 300.10(c)(2). In the Non-Federal Funds Final Rules, the Commission provided a non-exhaustive list of factors that may be considered in determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a national party committee. 11 CFR 300.2(c). *See* Non-Federal Funds Final Rules, 67 FR at 49084 (''The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA.'') The Commission seeks comment on whether host committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered *per se* entities that are directly or indirectly established, financed, maintained, or controlled by the national party committees holding conventions in the relevant cities. Alternatively, the Commission seeks comment on whether host committees and municipal funds do not meet the criteria listed in 11 CFR 300.2(c) and, therefore, should be considered *per se* as a matter of law as entities that are not directly or indirectly established, financed, maintained, or controlled by the national party committees. Or should this question be resolved on a case-by-case basis by applying section 300.2(c)?

The Commission notes that the regulatory text relating to host committees and municipal funds proposed in this NPRM does not presume that host committees or municipal funds satisfy any of the criteria listed in 11 CFR 300.2(c) for determining whether entities are directly or indirectly established, financed, maintained, or controlled by national party committees. This approach, if adopted, would not preclude a Commission finding that a particular host committee or municipal fund does, in fact, satisfy one or more of the specified factors in 11 CFR 300.2(c) with respect to a particular national party committee. If the Commission were to conclude that host committees or municipal funds are, as a matter of law, ''directly or indirectly established, financed, maintained, or controlled'' by national political parties, many of the same questions raised in the context of the discussion of ''agency,'' above, would need to be addressed. Accordingly, the Commission seeks comments on the same issues raised above in connection with the agency discussion.

C. Impact of BCRA on Convention Committees

In contrast to host committees and municipal funds, convention committees are, as a matter of law, entities directly established, financed, maintained, or controlled by national party committees. The Commission's regulations *require* national party committees to ''establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention.'' 11 CFR 9008.3(a)(2). In addition, under 11 CFR 9008.3(a)(2), convention committees are required to receive the national party's entitlement to public funds and are responsible for making ''[a]ll expenditures on behalf of the national committee for convention expenses;'' as such, they clearly are ''agents'' of the national party committees as well as ''entities directly or indirectly established, financed, maintained, or controlled'' by the national party committees, as those terms are defined in 11 CFR 300.2(b) and (c). Therefore, for purposes of this NPRM, the Commission proposes that BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and using non-Federal funds shall apply to convention committees by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). *See also* 11 CFR 300.2(b) and (c).

The Commission seeks comment on whether this prohibition extends to bar convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds. Commission regulations permit certain local businesses and organizations to donate

funds or make in-kind donations to a host committee to be used for the purposes listed in 11 CFR 9008.52(c)(1). A review of this list reveals that many of the contemplated transactions could not be characterized as in-kind donations to the convention committee, but instead relate to the provision of services primarily used by convention attendees. For example, the permitted expenses' purposes include: Welcoming convention attendees; facilitating commerce by distributing guides to attendees; providing bus transportation; and providing law enforcement services. *See* 11 CFR 9008.52(c)(1). In order to conclude that the convention committee received ''a contribution, donation, or transfer of funds or any other thing of value * * * that are not subject to the limitations, prohibitions, and reporting requirements of [FECA],'' the Commission would need to determine that the convention committee itself received something of value. In many of the transactions contemplated by 11 CFR 9008.52(c)(1), host committees are providing something of value to convention delegates, other attendees, press, local businesses, and the local community; in these transactions the convention committee is a bystander, not a recipient of something of value. When a host committee provides, for example, a shopping/dining guide, to convention attendees, it is difficult to conclude that the convention committee received anything of value. The Commission seeks comment on whether BCRA requires that permissible host committee and municipal fund expenses must be limited to such activities.

Other permissible host committee and municipal fund expenses certainly provide something of value to the convention committee. For example, host committees and municipal funds are permitted to provide an auditorium or convention center and construction services for that location. 11 CFR 9008.52(c)(1)(v). The Commission seeks comment on whether BCRA permits host committees and municipal funds to provide things of value to convention committees. Assuming that it does, in order to ensure that non-Federal funds raised by host committees and municipal funds are not spent on behalf of convention expenses beyond the ''very narrow'' host committee/municipal fund exception to the convention committee's expenditure limit, however, the Commission is also considering revising its regulations to more precisely circumscribe the permitted purposes for host committee and municipal fund expenses as discussed below. *See Explanation and Justification for Regulations on Federal Financing of Presidential Nominating Conventions and the Presidential Election Campaign Fund,* 44 FR 63036, 63038 (Nov. 1, 1979) (stating: ''Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses.'').

D. Solicitation of Funds for Host Committees and Municipal Funds Under BCRA

1. 2 U.S.C. 441i(a) and (e)(1)

As explained above, BCRA prohibits national party committees, as well as their agents and entities they directly or indirectly establish, finance, maintain, or control from soliciting or directing non-Federal funds on behalf of, or to, others. 2 U.S.C. 441i(a). BCRA also prohibits Federal candidates and individuals holding Federal office from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these prohibitions to the agents of Federal candidates acting on their behalf and individuals holding Federal office and entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(e)(1).

The foregoing restrictions on Federal candidates and officeholders under 2 U.S.C. 441i(e)(1), in contrast to the restrictions on national party committees under 2 U.S.C. 441i(a), only apply to funds ''in connection with an election for Federal office'' or any other election. 2 U.S.C. 441i(e)(1)(A) and (B). The Commission seeks comment on what impact this statutory distinction has on any of the issues addressed in this rulemaking.

Are *all* host committee and municipal fund activities ''in connection with an election for Federal office'' or any other election within the meaning of 2 U.S.C. 441i(e)? If not, are *any* such activities ''in connection with an election for Federal office''? If none satisfy that statutory phrase, do the prohibitions and limitations of section 441i(e) not apply as a matter of law to the funds solicited, raised, and spent by host committees and municipal funds on that basis alone? In the alternative, are host committee and municipal fund activities subject to this provision of 2 U.S.C. 441i(e) only if they are *not* for the purpose of promoting the convention city and its commerce? As described above, the Commission's past treatment of host committee and municipal fund expenses viewed those expenses as a permissible exception to the prohibition on corporate or labor organization funds because they lacked an election-influencing purpose. FECA's definitions of ''contribution'' and ''expenditure'' both require that such be made ''for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i). Does the Commission's determination that certain permissible host committee and municipal fund expenses are not ''contributions'' or ''expenditures'' also require that the Commission determine those expenses are not ''in connection with an election for Federal office'' under 2 U.S.C. 441i(e)(1)(A)?

Are any of the costs of conducting a convention ''in connection with an election for Federal office''? FECA clearly defines ''election'' to include ''a convention or caucus of a political party which has the authority to nominate a candidate.'' 2 U.S.C. 431(1)(B). However, other election administering expenses, whether incurred by States or privately funded in those States that require political parties to pay the costs of certain primary elections, are not considered FECA-regulated expenses. *See, e.g.*, AO 1991–33 (noting that the parties act as agents of the State in performing the ministerial functions of administering the primaries). Are the costs of conducting a convention, whether incurred by a convention committee, host committee, or municipal fund, regulated by FECA, other than those provisions that expressly mention convention activities? Although the Fund Act provides for grants of public funds to pay these expenses and imposes an expenditure limitation in exchange for accepting such a grant, should the Commission conclude that some or all of the expenses of conducting a nominating convention are not subject to FECA as amended by BCRA? If the Commission determines that these expenses are *not* in connection with a Federal election, what changes should it make to its regulations?

The Commission carefully considered the scope of BCRA's prohibition on solicitation and direction of non-Federal funds by national party committees, Federal candidates, Federal officeholders, and their agents in the Non-Federal Funds Final Rules. *See* 67 FR at 49087–93, 49106–09, 49122–23, and 49131–32. The Commission seeks comment on whether the new rules implementing BCRA's ban on the solicitation of non-Federal funds are sufficient to resolve the question of whether national party committees,

Federal candidates, Federal officeholders, or their agents may solicit funds for host committees and municipal funds. *See* 11 CFR part 300, subparts A and D. Alternatively, should the Commission promulgate an additional regulation in its Federal Financing of Presidential Nominating Conventions regulations (11 CFR part 9008) that would specifically apply BCRA and the Non-Federal Funds Final Rules to the financing of national nominating conventions and explain how the Commission's regulations in 11 CFR part 300 work in this context?

2. 2 U.S.C. 441i(d)

BCRA prohibits national party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, financed, maintained, or controlled by them from soliciting any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to tax-exempt organizations described in 26 U.S.C. 501(c) that make ''expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)'' and organizations described in 26 U.S.C. 527. *Id.* In considering how to implement these BCRA provisions, the Commission concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act.

Commission regulations at 11 CFR 300.11 and 300.50 implement this safe harbor and set forth a process by which a section 501(c) organization can certify that it does not make expenditures or disbursements in connection with an election for Federal office. Under 11 CFR 300.11(c) and 300.50(c), national party committees, their agents, and entities they directly or indirectly establish, finance, maintain, or control may obtain and rely upon a certification that the organization has not and does not intend to make expenditures or disbursements in connection with an election for Federal office as specified in 11 CFR 300.11(d).

The Commission seeks comment on whether, as a matter of law, host committees and municipal funds make ''disbursements'' in connection with an election for Federal office, even as they adhere to the requirements in current 11 CFR 9008.52, which arguably would leave host committees and municipal funds outside the certification safe harbor set out in 11 CFR 300.11. A ''disbursement'' is defined, in 11 CFR 300.2(d), as ''any purchase or payment made by: (1) a political committee; or (2) any other person, including an organization that is not a political committee, that is subject to [FECA].'' The Commission has historically treated host committees and municipal funds as organizations that are subject to FECA that make purchases or payments in connection with a Federal election because FECA defines presidential nominating conventions as Federal elections. 2 U.S.C. 431(1)(B). As is noted above, the Commission is seeking comment on whether this historical treatment of host committees and municipal funds is appropriate. The Commission's past treatment of permissible host committee and municipal fund disbursements has been that they are not expenditures for the purpose of influencing an election and, therefore, are not subject to the corporate and labor organization prohibition in 2 U.S.C. 441b. However, BCRA reaches far beyond expenditures and requires only ''disbursements in connection with an election'' to make a 501(c) organization subject to the prohibition in 2 U.S.C. 441i(d)(1). The Commission seeks comment on what impact this BCRA statutory provision has, if any, on the Commission's treatment of host committees and municipal funds.

The Commission proposes a new regulation, 11 CFR 9008.55, in order to apply 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds that have 26 U.S.C. 501(c) status. Paragraph (a) would state the general proposition that all host committee and municipal fund payments in compliance with 11 CFR part 9008 are disbursements in connection with a Federal election for purposes of 11 CFR part 300. Paragraph (b) would state that host committees and municipal funds would not be eligible to make the certification pursuant to 11 CFR 300.11(d). The Commission seeks comment on the proposed new regulation and the approach embodied in it.

In the alternative, the Commission seeks comment on whether host committees and municipal funds should be eligible to make the certification pursuant to 11 CFR 300.11(d) and, if so, under what circumstances? The Commission also seeks comment on whether Congress, in enacting BCRA, in any way intended to restrict convention financing practices that were legal before BCRA became law, including the activities of host committees and municipal funds (and any involvement therein by national party committees, Federal candidates, Federal officeholders, and their agents.) Specifically, comment is sought on whether permissible host committee and municipal fund expenses do not constitute disbursements in connection with an election.

3. 2 U.S.C. 441i(e)(4)

In 2 U.S.C. 441i(e)(1), BCRA prohibits Federal candidates and officeholders [5] from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal or non-Federal office unless the funds meet the source and amount restrictions of the Act. *See also* 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4). First, BCRA allows Federal candidates, individuals holding Federal office, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions, for a 501(c) organization, other than organizations whose ''principal purpose'' is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation does not specify how the funds will be spent. Second, BCRA permits Federal candidates and Federal officeholders, and individuals who are agents acting on their behalf, to make a solicitation explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct Federal election activity as described above or for a 501(c) organization to conduct these activities, provided that only individuals are solicited for no more than $20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal candidate and officeholder solicitations for 501(c) organizations.

As noted above in connection with national party committee solicitations of non-Federal funds, host committees and municipal funds operating in compliance with 11 CFR part 9008

[5] An ''individual holding Federal office'' is defined as ''an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.'' 11 CFR 300.2(o). It does not include those ''who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election.'' Non-Federal Funds Final Rules, 67 FR at 49,087. This definition is identical to the definition of ''Federal officeholder'' in 11 CFR 113.2(c).

arguably make disbursements in connection with the national nominating convention, which is an election under FECA. Under 11 CFR 300.52(a)(1) and 300.65(a)(1), Federal candidates, individuals holding Federal office, and agents acting on their behalf are prohibited from making general solicitations of non-Federal funds for 501(c) organizations that ''engage in activities in connection with an election.'' Accordingly, the exception permitting Federal candidates, Federal officeholders, and their agents to make general solicitations on behalf of 501(c) organizations would arguably not, as a matter of law, apply to host committees and municipal funds. In addition, the exception permitting Federal candidates, Federal officeholders, and their agents to make specific solicitations for certain 501(c) organizations may not, as a matter of law, apply to host committees and municipal funds because it is not their principal purpose to engage in certain types of Federal election activity described in 2 U.S.C. 431(20)(A)(i) and (ii).

To make clear that the above-described exceptions to the general ban on solicitation do not apply to solicitation of non-Federal funds by Federal candidates, Federal officeholders, and their agents on behalf of host committees and municipal funds, the Commission is considering adding a new provision to part 9008. *See* new 11 CFR 9008.55. Paragraph (c) of this section would state that host committees and municipal funds are ineligible for the exceptions in 11 CFR 300.65. The Commission seeks comment on this approach.

E. Effect of BCRA on Offsets

The Commission has permitted convention committees to ''offset'' in-kind contributions received from host committees that are deemed impermissible in post-convention audits. Rather than require repayment of 100% of these receipts, the convention committee may offset them with convention committee expenditures that could have been paid by the host committee. The Commission seeks comment on whether BCRA requires any reevaluation of this practice.

F. Effect of BCRA on Commercial Vendor Activities Related to Nominating Conventions

The current rules at 11 CFR 9008.9 permit convention committees to receive goods and services from commercial vendors, including corporations, at reduced or discounted rates, or at no charge, under certain circumstances. The prohibition in BCRA against the receipt of non-Federal funds, 2 U.S.C. 441a(a), may necessitate a change to this regulation.

Current 11 CFR 9008.9(a) permits commercial vendors, including businesses that are incorporated, to provide reductions or discounts in the ordinary course of business; that is, if the vendor has an established practice of providing the same reductions or discounts for the same amount of goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. The Commission believes this provision is consistent with BCRA and therefore proposes to retain it in its current location. It would be revised to combine the introductory text and to make other conforming changes based on the other proposed changes to the rule described below.

Current provisions (b) and (c) of 11 CFR 9008.9, however, address items provided for promotional consideration (which are something of value), such as complimentary, temporary use of automobiles, and items of *de minimis* value, such as tote bags for convention attendees. The rationale for the promotional consideration exception was explained in Advisory Opinion 1988–25, where the Commission considered whether it was permissible, under FECA and the Fund Act, for General Motors to provide complimentary use of automobiles to convention committees for use during the 1988 Democratic and Republican conventions in exchange for GM's ability to advertise the fact that its vehicles were the ''official'' vehicles of the respective conventions. The Commission concluded that GM's provision of 500 automobiles to the Democratic and Republican convention committees in exchange for advertising rights did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b(a). The Commission based its conclusion primarily on evidence that GM had a practice of providing complimentary use of automobiles to other, non-political conventions of similar size and duration in exchange for such advertising authority and on evidence that the value of GM's donation was proportionate to the commercial return GM expected to receive during the life of the convention.

The rationale for allowing commercial vendors to provide items of *de minimis* value at little or no charge to convention attendees was explained in Advisory Opinion 1980–53, where the Commission considered whether it was permissible, under FECA and the Fund Act, for Kelly Services, Inc., to provide, at no charge, tote bags to persons attending the 1980 Democratic and Republican conventions. The Commission concluded that Kelly Services' provision of 9,200 tote bags to the Democratic convention and 7,600 tote bags to the Republican convention did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b, and did not count toward the national parties' expenditure limits, in 11 CFR 9008.7(a). The Commission based its conclusion on three factors: (1) The low cost of the tote bags ($2.12 each); (2) evidence that the tote bags were being provided solely for bona fide advertising purposes of a local business; and (3) evidence that the tote bags were provided in the ordinary course of Kelly Services' business.

While the provision of items for promotional consideration and items of *de minimis* value were permissible under FECA and the Fund Act, these provisions may contravene BCRA's prohibition on national party committee acceptance of non-Federal funds, 2 U.S.C. 441i(a)(1), by authorizing national party committees to receive and accept something of value not paid for with Federal funds. The Commission seeks comment on whether these practices, which were legally permissible in the past, are barred by BCRA. However, as explained above, the rules proposed in this NPRM contemplate that it is still appropriate for host committees and municipal funds to accept these corporate in-kind donations, provided such donations are in accordance with 11 CFR 9008.52 and 9008.53. Accordingly, the Commission is proposing to move the provisions of current 11 CFR 9008.9(b) and (c) (convention committees) to 11 CFR 9008.52(a) (host committees), with a conforming amendment to 11 CFR 9008.53(a) (municipal funds). The introductory text would no longer reference the provision of goods or services at no charge as that reference pertained to paragraphs (b) and (c).

Under this reorganization, current paragraph (d) of 11 CFR 9008.9, which states that the value of goods or services provided under this section do not count towards the national party's expenditure limit, would be retained as redesignated paragraph (b) of 11 CFR 9008.9, but would be limited to standard industry reductions and discounts provided pursuant to 11 CFR 9008.9(a). The definition of ''commercial vendor'' would continue to be that set out at 11 CFR 116.1(c):

Any person providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.

G. Effect of BCRA on Private Events in the Convention City

Private events are often held in the city hosting a nominating convention during the convention. Corporations, labor organizations, and other groups can hold these events, which are frequently described as hospitality events, and often invite convention attendees including delegates, Federal candidates and officeholders, and party officials. These events are typically held in locations outside the convention venue, but often in close proximity to it. The temporal and geographic proximity of these events to nominating conventions has not previously subjected the events to regulation under FECA solely because of that proximity. Of course, FECA regulation could be triggered by such events if, for example, a Federal political committee holds a fundraising event. The Commission seeks comment on whether BCRA requires that private hospitality events held by corporations, labor unions, and other organizations in the convention city during the convention are subject to regulation and, if so, on what basis? Does it make any difference whether Federal candidates or officeholders or party officials or their agents (acting on their behalf) are invited to, appear, are recognized, or speak at such events?

V. Definition of ''Municipal Fund''

Over time, host committees and municipal funds have come to play increasingly similar roles in convention funding. The Commission therefore seeks comment on whether these entities should be treated similarly under the Commission's rules. Under this approach, which is reflected in the proposed rules that follow, host committees and municipal funds would continue to be permitted to spend money for identical purposes. The rules would change, however, to make municipal funds subject to the same disclosure requirements that apply to host committees under 11 CFR 9008.51 and 9008.52. Current host committee disclosure rules would also be revised as described below and would apply to both host committees and municipal funds. More importantly, the Commission's description of ''municipal funds'' would be revised to remove provisions that operate as barriers to municipal funds raising money in conjunction with host committees.

While the Commission's rules define ''host committee,'' *see* 11 CFR 9008.52(a), they do not currently define ''municipal fund.'' The Commission is proposing to add the following definition, at new 11 CFR 9008.50(c): ''A municipal fund is any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government.'' Under this definition, any organization operating under 11 CFR 9008.53 would be required to use a separate account for receipts and payments related to convention activities. Should the Commission adopt additional requirements for municipal fund status? Should municipal funds be limited to accounts subject to audit by State or local public agencies? Are there any other arrangements that would assure the funds received and disbursed by a municipal fund would be used for the promotion of the city and its commerce?

The proposed definition would eliminate the current provision in 11 CFR 9008.53(b)(1)(i) and (ii), requiring municipal funds to comply with two conditions: (1) The fund or account is not permitted to be restricted to use in connection with any particular convention; and (2) Donations to the fund or account must be unrestricted and shall not be solicited or designated for use in connection with any particular convention, event or activity. 11 CFR 9008.53(b)(1)(i) and (ii).

Host committees do not operate under similar limitations on fundraising. *See* 11 CFR 9008.52. These limitations complicate joint fundraising by a municipal fund and a host committee, and their utility has diminished as municipal funds have become functionally similar to host committees. Moreover, because hosting a national nominating convention is a significant undertaking even for large communities, organizations like municipal funds will necessarily devote substantial efforts toward their roles in hosting a convention. In these circumstances, little purpose is served by prohibiting municipal funds from engaging in fundraising devoted to a particular nominating convention or accepting donations accompanied by correspondence that refers to such a convention.

In the advisory opinions that formed the basis for this current rule, Advisory Opinions 1982–27 and 1983–29, the requesters assured the Commission that the undesignated nature of the donations received demonstrated the civic, not political, motives of the municipal funds and their donors. Subsequently, the Commission promulgated the regulation with these same restrictions on municipal funds in an effort to ensure that both the donations and use of the donations arose from civic, not political, motives. The Commission seeks comment on whether this requirement is unnecessary. A municipal fund's references to the political party that intends to hold its national nominating convention in the host city may not necessarily betray a partisan political motivation, and insisting on no such reference in the solicitation materials and in the responses from donors may serve little or no purpose.

Consequently, the Commission proposes deleting from its definition of municipal funds the requirements that the fund itself, solicitations for donations to the fund, and the donations to the fund not be restricted to a particular convention. The Commission also proposes to restructure the municipal fund regulation, 11 CFR 9008.53, to follow the structure of the host committee regulation, 11 CFR 9008.52, and to use the name by which these funds have come to be known, ''municipal funds.'' Alternatively, the Commission also seeks comment on whether it should retain the current distinction between municipal funds and host committees. Under the alternative approach, should the Commission clarify the prohibitions of 11 CFR 9008.53, namely that a municipal fund may not be restricted or accept or solicit restricted donations? What standard should the Commission adopt for when a municipal fund is ''restricted to use in connection with any particular convention'' contrary to 11 CFR 9008.53(b)(1)(i)? Under what circumstances is it appropriate to conclude that donations or solicitations restricted or designated for use in connection with a particular convention contrary to 11 CFR 9008.53(b)(1)(ii)?

The Commission seeks comment on whether the examination and audit authority of the Commission outlined in 11 CFR 9008.54, which mandates audits of convention host committees without cause, has an adequate statutory basis under FECA. In promulgating the predecessor to the current 11 CFR 9008.54, the Commission explained that: ''This section provides for an examination and audit of each host committee. Such committees are permitted to receive donations to defray convention expenses. It is hence necessary for the Commission to audit them in order to insure that those donations were properly raised and

spent.'' *Explanation and Justification for Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions,* 44 FR 63036, 63038 (Nov. 1, 1979). The Fund Act specifically authorizes the Commission ''to conduct such examinations and audits (in addition to the examinations and audits required by section 9007(a)), . . . as it deems necessary to carry out the functions and duties imposed on it by this chapter.'' 26 U.S.C. 9009(b). In addition, as authority for this requirement, the Commission currently cites 2 U.S.C. 437, which includes the statutory provisions requiring host committee reporting; 2 U.S.C. 438(a)(8), the Commission's general regulation authority; 26 U.S.C. 9008, which provides for payments for presidential nominating conventions; and 26 U.S.C. 9009, which includes further regulation authority in addition to the provision cited above concerning audits additional to those required by 26 U.S.C. 9007.

Host committees are the only non-publicly funded committees that are subject to an automatic audit by the Commission. Convention committees are also subject to automatic audits under 11 CFR 9008.11 no later than December 31 of the year the convention was held and may, at any time, be subject to other examinations and audits as the Commission deems necessary. However, convention committees receive millions of dollars of public funds and the Commission's audit authority helps insure that those public funds are lawfully spent. The audit authority provided to the Commission under 11 CFR 9008.11 is also statutorily based in 26 U.S.C. 9008 and 9009.

The Commission seeks comment on whether the host committees should be subject to automatic audits under 11 CFR 9008.54.

While the Commission is proposing to treat host committees and municipal funds the same in most respects (*i.e.*, permitted expenses, registration and reporting requirements), it does not propose to audit municipal funds as it currently audits host committees. Under the current rules, host committees are subject to a Commission audit pursuant to 11 CFR 9008.54, while municipal funds are not routinely subject to a Commission audit. The Commission, however, has conducted financial transaction examinations of municipal fund accounts, and it expects to continue to do so in the appropriate circumstances. The Commission believes that the governmental controls over municipal funds obviate the need to subject municipal funds to a routine audit like host committees are subject to pursuant to 11 CFR 9008.54. Because municipal funds necessarily are separate accounts of a government agency or municipality, the municipal funds are subject to financial controls by the local authorities. Under these circumstances, the Commission does not believe routine audits are necessary. The Commission seeks comment on this approach and specifically whether the comity required between agencies of the Federal government and agencies at the State or local level counsels against routine audits of municipal funds.

The absence of routine audits should not be misconstrued to limit the Commission's authority to examine municipal fund transactions related to conventions. Because municipal funds provide substantial in-kind donations to publicly funded convention committees, the Commission's audit of convention committees under 11 CFR 9008.11 may require a detailed and thorough review of municipal fund transactions. Additionally, municipal funds are subject to Commission audit pursuant to 11 CFR 111.10.

Current 11 CFR 9008.50, entitled ''Scope,'' sets out the scope of subpart B of part 9008, ''Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations.'' The Commission is proposing to change the title of this Subpart to ''Host Committees and Municipal Funds Representing a Convention City.'' The title of 11 CFR 9008.50 would be changed to ''Scope and Definitions,'' and the current provisions of this section would be revised with conforming changes and placed in new paragraph (a). The definition of ''host committee'' would be moved from 11 CFR 9008.52(a) to new 11 CFR 9008.50(b), and the new definition of ''municipal fund'' would appear at new 11 CFR 9008.50(c). Conforming changes using the newly defined term ''municipal fund'' would be made to 11 CFR 9008.8(b)(2) and 9008.12(b)(7).

VI. Permissible Expenditures by Convention Committees, Host Committees and Municipal Funds

Permissible expenditures by convention committees are currently set forth at 11 CFR 9008.7(a), while those by host committees and municipal funds are found at current 11 CFR 9008.52(c). *See also* 11 CFR 9008.53(b). As described above, these rules are intended to require convention committees to pay expenditures that are ''political'' in nature, while permitting host committees and municipal funds to pay commercially motivated expenses. The intent of the existing rules is for the convention committee to pay expenses incurred in connection with nominating its party's candidates, while the host committee and the municipal fund pay expenses incurred to make the convention city attractive to potential visitors and those seeking a site to hold future conventions or similar events. Some expenditures fit into both categories, which has caused confusion. Furthermore, the current rules do not state the types of expenditures that a host committee or municipal fund may *not* incur on behalf of a convention committee.

After the last several election cycles, some observers have raised questions about whether host committees and municipal funds continue to operate in the manner contemplated by the regulations. The Commission has encountered host committees and municipal funds that paid for expenses that the Commission determined were not for permissible host committee or municipal fund purposes. In an effort to provide additional guidance on the scope of expenses that may be paid by a host committee or municipal fund, the Commission noted that its ''decisions regarding the audits of the 1996 convention and host committees serve to provide additional guidance for the 2000 election cycle.'' *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49358 (Sept. 13, 1999). The Commission therefore seeks comment on whether donations to host committees and municipal funds should be considered to stem from political motivations, at least in part. If so, what changes to the Commission's rules should be made? Comment is also sought on whether the Commission should seek to limit the exception for host committee and municipal fund expenses to ensure that impermissible funds are not used in connection with the national nominating convention. If so, what measures should the Commission adopt? Is the total amount of expenses the appropriate measure, or should the Commission continue to focus on the purpose of the expenses?

Given the evolution in the operation of host committees and municipal funds, as well as the need to ensure, in light of BCRA, that a host committee or municipal fund's non-Federal funds are not used to provide facilities or services that constitute an impermissible contribution to convention committees, the Commission is proposing to reorganize the types of permissible expenses listed in current 11 CFR 9008.7(a)(4) and 9008.52(c). The current

regulations provide a definition of ''convention expenses'' in 11 CFR 9008.7(a)(4), which explains that convention expenses ''include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities.'' 11 CFR 9008.7(a)(4). The current regulation includes a non-exhaustive list of 13 examples of particular types of convention expenses. *See* 11 CFR 9008.7(a)(4)(i) to (xiii).

A. Revisions to Convention Expenses, 11 CFR 9008.7(a)(4).

The Commission is considering two alternatives for revising 11 CFR 9008.7(a)(4), both of which are set out in the regulatory text portion of this NPRM. The alternatives are intended to reach the same result as to what expenses may be paid by convention committees, host committees, and municipal funds. They differ as to the location of various provisions regarding permissible and impermissible expenses. Alternative A would involve removing the list of thirteen examples of particular types of convention expenses in 11 CFR 9008.7(a)(4). The Commission's experience with national nominating conventions indicates that, generally speaking, the public funds provided for conventions are carefully conserved, given the convention committees' limited resources. Thus, the Commission is considering, under Alternative A, whether the convention committees' use of funds can be adequately addressed with the general and generic definition of ''convention expenses'' in section 9008.7(a)(4). Additionally, using a broad and generic definition is consistent with the approach in the Commission's regulations concerning qualified campaign expenses for presidential primary and general elections. *See* 11 CFR 9002.11 (general election definition of qualified campaign expense); 11 CFR 9004.4 (general election use of payments); 11 CFR 9032.9 (primary election definition of qualified campaign expense); and 11 CFR 9034.4 (primary election use of contributions and matching payments).

Moreover, a number of the examples qualify as ''convention expenses'' in such an unambiguous way, the value of stating them as an example is questionable. For example, one states that ''salaries and expenses of convention committee employees * * * and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention.'' Could such expenses fail to meet the general definition of ''convention expenses'' in section 9008.7(a)(4) under any interpretation? A few of the examples impose some limitations that may not otherwise be obvious. Entertainment activity expenses is one such provision, 11 CFR 9008.7(a)(4)(viii). While provisions such as this one focus on preventing the convention committee from subsidizing other organizations, the Commission is considering whether the opposite arrangement is more frequently encountered. The Commission also seeks comment on two other particular provisions: 11 CFR 9008.7(a)(4)(iii) and (iv), which permit convention committees to reimburse national party committees for a portion of certain employees' compensation. Do convention committees typically make the arrangements contemplated by these provisions? Or do some employees temporarily leave the employ of the national party committees and become employees of the convention committees?

The Commission seeks comment on its proposed simplification of the definition of convention expenses under Alternative A. Particularly, are any of the thirteen examples necessary to include in the codified regulation? Are there any drawbacks to deleting the thirteen examples? Does the proposed definition of ''convention expense'' standing alone provide sufficient guidance?

Alternatively, the Commission seeks comment on whether it should refine the current list of examples. Under this alternative, the Commission would retain the general definition of ''convention expenses'' in 11 CFR 9008.7(a)(4). What changes should be made to the list of examples? Should any be deleted? Should other examples be added?

In contrast, Alternative B would retain the list of thirteen permissible convention expenses currently located in section 9008.7(a)(4), but move them to a new section, 11 CFR 9008.17. Under this alternative, new section 9008.17 would contain lists of permissible expenses for convention committees (paragraphs (a) and (b)), and host committees and municipal funds (paragraphs (b) and (c)). *See* proposed 11 CFR 9008.17. Paragraph (a) of section 9008.17 would define ''convention expenses'' generally in the same manner as it is currently defined in section 9008.7(a)(4). *See* proposed 11 CFR 9008.17(a). The thirteen specific permissible convention expenses that may be paid by convention committees currently listed in section 9008.7(a)(4) would be moved to new section 9008.17(a) and (b).

Please note that under Alternative B, section 9008.7(a)(4) would be revised to cross reference 11 CFR 9008.17(a) and (b). Alternative B's version of section 9008.7(a)(4) is not set out in the regulation text that follows. Neither alternative would amend the prohibited uses of a convention committee's public funds listed in 11 CFR 9008.7(b).

B. Substantive Changes to Permissible Host Committee and Municipal Fund Expenses.

The Commission also proposes under both alternatives to revise the list of permissible expense purposes for host committees and municipal funds listed in current 11 CFR 9008.52(c)(1). The proposed revised listed would appear in paragraph (b) of section 9008.52, and would be based substantially on the current list in section 9008.52(c)(1). However, the Commission proposes a number of changes intended to clarify and add specificity as to the range of permissible expenses.

The Commission proposes to combine current 11 CFR 9008.52(c)(1)(i) and (c)(1)(x) to state that host committees and municipal funds may pay expenses incurred for the purpose of promoting the suitability of the city as a convention site including those related to the selection committee's accommodations. *See* 11 CFR 9008.52(b)(1). The Commission seeks comment on this proposed revision, particularly whether the rule should be limited to such costs incurred prior to signing the site selection agreement.

The Commission proposes to narrow the focus of the provision concerning the use of an auditorium or convention center and construction-related services in current section 9008.52(c)(1)(v). *See* proposed 11 CFR 9008.52(b)(5). To that end, the revised purpose would contain a non-exhaustive list of permissible construction-related services and would make it clear that only construction-related services for the purpose of designing, creating, or installing the physical or technological infrastructure for the conduct of the convention are permissible. *Id.* It would also codify in the regulations some of the Commission's decisions made in connection with the 1996 conventions. Specifically, the Commission considered a number of television production expenses and determined that some were permissible host committee expenses and others were not. Many of the distinctions the Commission made were based on whether the particular expense was related to the infrastructure of the

convention center. Another of the Commission's decisions related to 1996 reflected in the proposed section 9008.52(b)(5) was to permit host committees to pay telephone charges incurred by the convention committee.

The proposal would narrow the rule in current section 9008.52(c)(1)(vi) allowing for the provision of local transportation services. Whereas the current section allows for the provision of local transportation services without restriction, the Commission proposes to narrow this purpose to the host committee to provide such services only if they are made available to convention delegates and other individuals attending the convention. *See* proposed 11 CFR 9008.52(b)(6).

The rule in current section 9008.52(c)(1)(vii) allowing for the provision of law enforcement services would be expanded. In light of heightened security concerns involving high-profile events attended by large numbers of people, such as presidential conventions, the Commission proposes to broaden this purpose to permit the provision of ''security services'' as well as law enforcement services. *See* proposed 11 CFR 9008.52(b)(7). The Commission also proposes to delete the current requirement that only law enforcement services ''necessary to assure orderly conventions'' may be provided, in recognition of the fact that maintenance of orderly conventions is only one of many legitimate security concerns. *Id.* To codify another of the Commission's decisions in connection with the 1996 conventions, tickets, badges, and passes would be specifically mentioned as part of permitted security.

The provision related to hotel rooms in current 11 CFR 9008.52(c)(1)(ix) would also be clarified. This would codify another of the Commission's 1996 decisions. The provision would be clarified to permit host committees and municipal funds to provide hotel rooms to convention committees for whatever rate the host committee paid for the rooms, including at no charge or at a reduced rate based on the number of other rooms rented. *See* proposed 11 CFR 9008.52(c)(9).

The Commission proposes to eliminate the final purpose of ''other similar convention related facilities and services,'' in current section 9008.52(c)(1)(xi), which has created confusion and could be improperly read to include a broad array of expenses that is inconsistent with a specific list of permitted expenses. The Commission seeks comment on this change.

The Commission seeks comment on the proposed changes to the list of permissible host committee and municipal fund expense purposes. Specifically, does the proposed regulation provide sufficient guidance to inform convention committees, host committees, and municipal funds of what is permitted? Are other restrictions necessary to ensure that the permitted expenses are appropriate for host committees and municipal funds? Should other expense purposes be added to list? Are there any other aspects of the Commission's 1996 decisions that should be incorporated into the rules?

The Commission also proposes to add a new provision defining impermissible host committee and municipal fund expense purposes. This provision is proposed as paragraph (c) of section 9008.52 under Alternative A. It would include a general prohibition on providing anything of value to a convention committee, national political party committee, or any other political committee, except as expressly permitted under 11 CFR 9008.52(b)(1) and (5) through (8). *See* proposed 11 CFR 9008.52(c)(1). These purposes listed in paragraph (b) of proposed section 9008.52 are included in the exception because appropriate host committee and municipal fund expenses under these sections would involve the provision of something of value to the convention committee. The purposes listed in section 9008.52(b)(2) through (4) are not included in the exception because a host committee or municipal fund must not provide anything of value to the convention committee as it welcomes attendees to the convention city, facilitates commerce, or pays its own administrative expenses, which are the purposes listed in the cited provisions. The list of prohibited expense purposes includes another provision to prohibit the use of donations to host committee or municipal funds for expenses related to creating, producing, or directing the convention proceedings. *See* proposed 11 CFR 9008.52(c)(2). The proposal is intended to limit any of the permissible purposes so that if the expense would be prohibited by 11 CFR 9008.52(c)(2), then it would not be permitted even if it might also satisfy one of the permissible expense purposes in 11 CFR 9008.52(b). This proposal would codify one of the more significant of the Commission's decisions in connection with the 1996 conventions that the Commission cited as guidance in the 1999 rulemaking. *See Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49358 (Sept. 13, 1999). The Commission seeks comment on whether this proposal is sufficient to contain the non-Federal funds of host committees and municipal funds to uses consistent with the prohibitions and limitations imposed on the use of such funds by BCRA. Should additional expense purposes be added to the prohibited list? Do the listed prohibitions provide adequate guidance?

C. Regulatory Structure of Permissible Host Committee and Municipal Fund Expenses.

Again, the Commission is considering two alternatives that differ as to the location for the provisions regarding permissible host committee and municipal fund expenses. Both reflect the proposed substantive changes to the host committee and municipal fund permitted expenses described above in the section entitled ''Substantive Changes to Permissible Host Committee and Municipal Fund Expenses.'' Alternative A would involve providing a revised list of permissible host committee/municipal fund expenses in paragraph (b) of section 9008.52. *See* proposed 11 CFR 9008.52. Alternative B would involve providing substantially the same revised list of permissible host committee and municipal fund expenses, but would locate them in paragraphs (b) and (c) of new section 9008.17, rather than in 11 CFR 9008.52(b). Paragraph (b) of new section 9008.17 would list expenses that may be paid by convention committees, host committees, or municipal funds and paragraph (c) of 9008.17 would list expenses that may be paid by host committees or municipal funds, but shall not be paid by convention committees. Finally, the new provisions expressly prohibiting certain expenses to host committees and municipal funds would appear in 11 CFR 9008.52(c) under Alternative A and in 11 CFR 9008.17(d) under Alternative B.

Please note that under Alternative B, 11 CFR 9008.52 and 9008.53 would be revised to cross reference to the appropriate provisions of the new section 9008.17; the Alternative B version of sections 9008.52 and 9008.53 is not set out in the proposed regulations that follow. The Commission seeks comment on the two different organization schemes for permissible host committee and municipal fund expenses.

VII. Definition of ''Local'' Businesses, Labor Organizations, Other Organizations, and Individuals

Commission regulations currently permit host committees and municipal

funds to receive donations from local businesses, local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization. 11 CFR 9008.52(c)(1) and 9008.53(b)(1). Frequently, the Commission has been called upon to determine whether a particular individual, corporation, labor organization, or other organization qualifies as ''local'' within the meaning of 11 CFR 9008.52(c)(1) and 9009.53(b). These often entail difficult and seemingly arbitrary distinctions. For example, does the presence of a single employee working from a home-based office constitute a business's local office under section 9008.52 and section 9008.53?

Given the Commission's proposal to tighten the restrictions that prohibit host committees and municipal funds from paying expenses that have primarily a political, rather than commercial, purpose, the Commission is considering whether it remains necessary to focus on the source of host committee and municipal fund donations. Accordingly, the Commission proposes to delete the requirements in 11 CFR 9008.52(c)(1) (host committees) and 11 CFR 9008.53(b)(1) (municipal funds) that only ''local'' businesses, labor organizations, other organizations, and individuals may make donations to host committees and municipal funds. A conforming change would also be made to 11 CFR 9008.12(b)(7). Under the Commission's proposal, any business, labor organization, other organization, or individual, no matter where they are located, reside, or do business, would be permitted to make donations or in-kind contributions to host committees and municipal funds, provided those donations and in-kind contributions comply with the restrictions prescribed in the regulations. Regardless of what it does on the categories of expenses that host committees and municipal funds may pay for, should the Commission abolish the locality requirement with respect to donations to host committees and municipal funds? If the Commission adopted this proposal, would it make it more feasible for smaller and mid-size cities, whose corporate and business presence may not be as great as the nation's largest cities, to successfully stage a national convention? The Commission seeks public comment on this approach.

As an alternative to deleting these ''local'' requirements, the Commission is considering an alternative approach that would retain the requirement that only ''local'' businesses, labor organizations, and other organizations may make donations and in-kind contributions to host committees and municipal funds. Under this alternative, the Commission would clarify its 1999 amendment to these regulations. The accompanying Explanation and Justification explained that this language was intended to cover ''individuals who work for a business's local office, or a labor organization's local office, or another organization's local office.'' *Explanation and Justification of Rules Governing Public Financing of Presidential Primary and General Election Candidates,* 64 FR 49355, 49358 (Sept. 13, 1999). However, the regulatory text did not require that the individuals work in the *local office* of the local organization; it only required that the individuals work for an organization that had a local office, which suggested that employees of a nationwide organization could donate to a host committee for any area where the organization maintained a facility. Thus, under this alternative, the Commission would revise the provision so that it would read ''individuals * * * who work for the local office of a business, labor organization, or other organization.'' A third alternative approach the Commission is considering is to rely exclusively on an individual's residence to determine whether the individual is local, instead of looking to an individual's employment as well. The Commission seeks comment on each of these alternatives.

VIII. Host Committee and Municipal Fund Registration and Reporting Requirements

Under 11 CFR 9008.51(a)(1), host committees must register with the Commission within 10 days of the date on which the party chooses the convention city. Host committees must also report using FEC Form 4 to disclose all receipts and disbursements, including in-kind contributions, made with respect to a national nominating convention. 11 CFR 9008.51(b). The initial reports are not due until the earlier of 60 days after the convention or 20 days prior to the presidential general election. *Id.* Subsequent reports are due quarterly, on the fifteenth day after the end of the quarter. 11 CFR 9008.51(b)(2). A final host committee report is due ten days after it ceases reportable activity. 11 CFR 9008.51(b)(3). Municipal funds, in contrast, are required to file only one report, which is due on the same day as the initial host committee report. 11 CFR 9008.51(c). This report need list only categories of facilities and services provided for the convention for disbursements and the total amounts of general revenues and private donations received to defray the expenses. *Id.* This municipal fund reporting regime was intended to strike a balance between two competing concerns: ensuring adequate public disclosure, on the one hand, and avoiding the imposition of unduly burdensome requirements on municipalities and other governmental entities, on the other. *See Explanation and Justification for Regulations on Presidential Election Campaign Fund and Financing of Presidential Nominating Conventions,* 59 FR 33606, 33614 (June 29, 1994).

The Commission seeks comment on several proposed revisions to these registration and reporting requirements for host committees and municipal funds, as described below. First, the Commission's experience has been that not all host committees are established within the ten days of the date on which the party chooses the convention, which is the current registration deadline. Accordingly, the Commission is proposing to revise the registration deadline in 11 CFR 9008.51(a) to require registration within ten days of the date on which the party chooses the convention city or ten days after the host committee is formed, whichever occurs later. Revised paragraph (a) would require that such registration be made by filing a Statement of Organization on FEC Form 1. The Commission is proposing that municipal funds be similarly treated as host committees, so they would be required to register with the Commission within ten days of the date on which the party chooses the convention city or ten days after the municipal fund is formed, whichever occurs later. Alternatively, the Commission seeks comment on whether either of the host committee or municipal fund registration deadlines should be ten days after they first solicit or accept donations for convention activities, or make disbursements for this purpose.

Second, the Commission proposes to apply the same reporting requirements that currently apply to host committees to municipal funds. Currently, paragraph (b)(1) of 11 CFR 9008.51 requires host committees to file a post convention report with the Commission on FEC Form 4. This report must be filed either 60 days following the last day that the convention is officially in session or 20 days prior to the presidential general election, whichever date is earlier. Currently, paragraph (b)(1) does not, however, provide a date for the close of books for host

committees' post-convention reports. The Commission proposes to revise paragraph (b)(1) to establish this date as of 15 days prior to the date of filing. This timeframe is consistent with the timeframes employed for post-convention reports filed by convention committees, *see* 11 CFR 9008.3(b)(2)(ii), and the Commission believes it should also provide sufficient time for host committees and municipal funds to prepare their reports. The Commission seeks comment on this approach.

Under current paragraph (b)(2) of 11 CFR 9008.51, host committees are required to file quarterly reports if they continue to accept receipts or make disbursements after the completion date of the post convention report. Host committees must continue to file such reports until they cease all activity. 11 CFR 9008.51(b)(2).

By contrast, under current paragraph (c) of 11 CFR 9008.51, municipal funds are required to file a post convention letter only rather than a post convention report on FEC Form 4. The timeframe within which municipal funds have to file this letter is the same as the timeframe applicable to host committees' post convention reports. Unlike host committees, however, municipal funds are not required to continue filing information with the Commission regarding their post convention activities, even if they accept receipts or make disbursements after the completion date of the post convention letter.

Given that the Commission is proposing to permit municipal funds to accept donations and make disbursements on the same terms as host committees, the Commission believes that it is necessary to apply the same reporting requirements to municipal funds that currently apply to host committees. Moreover, the Commission proposes to require continuing reporting in order to ensure that the reported information is ''complete'' as required by 2 U.S.C. 437(1). Accordingly, the Commission proposes to change paragraph (b) of 11 CFR 9008.51 to make the same reporting requirements apply to municipal funds as apply to host committees. As a conforming amendment, the Commission proposes to delete paragraph (c) of 11 CFR 9008.51, which sets forth the current municipal fund reporting requirements. The Commission seeks public comment on this approach, particularly on the issue of whether continuing reports are required in FECA to ensure completeness or are inconsistent with FECA's reference to a singular financial statement. 2 U.S.C. 437.

The Commission also proposes to revise paragraph (b)(1) of 11 CFR 5008.51 to clarify that reports filed pursuant to the requirements of 2 U.S.C. 437 contain the information specified in part 104, notwithstanding part 104's references to 2 U.S.C. 434. Although host committees and municipal funds are required to report by 2 U.S.C. 437(1), and 11 CFR part 104 refers to 2 U.S.C. 434, the Commission believes that having the information presented in the same format as that of other required reports would greatly aid the public disclosure of this financial activity. The Commission also proposes to revise 11 CFR 107.2 to reflect the revisions made to the registration and reporting requirements for host committees and municipal funds.

Finally, the Commission is proposing that convention committees, host committees, and municipal funds be required to submit a copy of all agreements that any one of those organizations makes with the city, county or State hosting the convention or any of the other convention-related organizations. *See* new 11 CFR 9008.3(b)(ii) (convention committees) and new 11 CFR 9008.51(a)(3) (host committees/municipal funds). Under the Commission's proposal, any such agreements would be required to be submitted along with the first required report due after the execution of the agreement. *Id.* This would include subsequent agreements to a previous agreement. Host committees and municipal funds would not be required to submit agreements made with convention committees if such agreements were already submitted to the Commission by the convention committee. *See* new 11 CFR 9008.51(a)(3).

The Commission is also seeking comment on which form convention committees, host committees, and municipal funds should use to report to the Commission. Current regulations require convention committees and host committees to use FEC Form 4 when reporting to the Commission. *See* 11 CFR 9008.3(b)(2)(i) and 9008.51(b)(1). The proposed rules that follow would maintain this requirement, in addition to requiring that municipal funds also use FEC Form 4 under new 11 CFR 9008.51(b)(1). The Commission is also considering eliminating this form and requiring convention committees, host committees, and municipal funds to file FEC Form 3P instead. FEC Form 3P is for reports of receipts and disbursements by authorized committees of candidates for the Office of President or Vice President. Use of FEC Form 3P would require some adaptation for the convention scenarios. The Commission seeks comment on whether it should maintain its requirement of FEC Form 4, or if it should adopt FEC Form 3P for convention committees, host committees, and municipal funds.

IX. Convention Legal and Accounting Fund (''CLAF'')

The Commission is proposing that convention committees be permitted to establish separate legal and accounting funds (''CLAF'') to pay for the legal and accounting services related solely to compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. *See* proposed 11 CFR 9008.8(b)(4)(ii)(B). Under this proposal, the funds raised by the CLAF would be required to be deposited in a separate account and would have to comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. Contributions to the CLAF could not exceed $25,000 per person, and $15,000 per multi-candidate political committee in any calendar year.

If proposed section 9008.8(b)(4)(ii)(B) were adopted, the payment by the CLAF of compensation to any individual or entity for legal and accounting services to ensure compliance with the FECA and the Fund Act and rendered to or on behalf of the convention committee in connection with the presidential nominating convention or convention-related activities would not be considered an expenditure and would not count against the expenditure limitations of this section. The convention committee would report contributions received to pay for legal and accounting services on a separate Schedule A, and would report payments for legal and accounting services on a separate Schedule B.

The Commission notes that its current regulations permit convention committees some flexibility in this area. National party committees, under 11 CFR 9008.8(b)(4), may raise contributions for convention related legal and accounting costs subject to national party committee limits for individuals and multi-candidate committees and otherwise in compliance with 11 CFR parts 110, 114 and 115. Furthermore, the regulations do not require that a separate account be established for legal and accounting receipts and expenditures. The current regulations also exempt payments made for legal and accounting expenditures from the expenditure limitations of section 9008.8.

Nevertheless, the establishment of a separate convention legal and

accounting fund would provide several beneficial aspects for the convention committee. The CLAF would have a separate contribution limit from the National committee's limit but subject to the same limitations and restrictions of the National committee. May the Commission permit contributors to make one contribution of the amount specified in 2 U.S.C. 441a(a)(1)(B) or 2 U.S.C. 441a(a)(2)(B) to the political committees established and maintained by the same national political party and a second contribution up to that same amount to a CLAF? May the Commission permit such committees to accept such contributions consistent with 2 U.S.C. 441a(f) and 441i(a)(1) and (2)? Contributions raised for the CLAF and spent for the convention related legal and accounting costs would free up convention grant funds to cover political activities rather than being used to pay lawyers and accountants. And finally, funds raised for the CLAF would help ensure that sufficient resources were available to the convention committee for legal and compliance obligations. The Commission seeks comment on all issues raised by this proposal.

X. Effective Date

The Commission invites comment on what the effective date should be for any regulations it adopts relating to financing of the national nominating conventions. Specifically, considering that efforts related to the 2004 conventions are underway, should any or all changes to the Commission's regulations not become effective until the 2008 conventions? If certain changes are required by BCRA, which became effective on November 5, 2002, does the Commission have the legal authority under the Administrative Procedures Act or otherwise to postpone the effective date until after the 2004 conventions have been held? Can the Commission have final regulations effective, but not enforce them until the 2008 conventions? If the Commission took either of these actions, would the Commission be essentially suspending BCRA as it applies to convention financing until 2008 and, if so, does the Commission have the power legally to do so? Alternatively, should any arrangements that were memorialized in a written contract by a convention committee, host committee or municipal fund prior to the effective date of the regulatory changes be subject to the regulations in effect at the contract's execution? For example, in September 1999, the Commission declined to modify existing regulations regarding the division of expenses between convention committees and host committees and stated it was doing so ''given that the party committees have already entered into contractual agreements with the sites selected.'' *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358 (Sept. 13, 1999). If the Commission concludes that BCRA as a matter of law requires certain regulatory changes, and that therefore its existing regulations are no longer consistent with the statutory law, does the Commission nevertheless have the legal authority to decline to modify existing regulations or to postpone the effective date of new regulations? The Commission also seeks comments on alternative approaches to the effective date issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to presidential candidates and their campaign committees. Presidential candidates, their committees and national party committees are not small entities. Most of these presidential campaigns receive full or partial funding from the Federal Government, and are subsequently audited by the Commission. The Commission reviews these rules every four years to reflect its experience in the previous presidential campaign. These rules propose no sweeping changes, and are largely intended to simplify this process. Many expand committee options; several are technical; and others codify past Commission practice. Those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 107

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds.

11 CFR Part 9035

Campaign funds.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

For the reasons set out in the preamble, it is proposed to amend Subchapters A, E and F of Chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for Part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

2. Section 104.5 would be amended by:

a. Revising paragraph (b)(1)(i)(C);
b. Revising paragraph (b)(1)(ii); and
c. Revising paragraph (b)(2).

Revisions are to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(b) * * *
(1) * * *
(i) * * *

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at paragraph (a)(2)(i) of this section, a post-general election report shall be filed as prescribed at paragraph (a)(2)(ii) of this section, and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate

receiving and has not received contributions aggregating $100,000 and does not anticipate making and has not made expenditures aggregating $100,000, the committee shall file a preelection report or reports, a post general election report and, quarterly reports, as prescribed in paragraphs (a)(1) and (2) of this section.

* * * * *

(2) *Non-election year reports.* During a non-election year, the treasurer shall file either monthly reports as prescribed by paragraph (b)(1)(i) of this section; or quarterly reports as prescribed by paragraph (a)(1) of this section. A principal campaign committee of a presidential candidate reporting under paragraph (b)(2) of this section may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

* * * * *

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

3. The authority citation for part 107 would continue to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8).

4. Section 107.2 would be revised to read as follows:

§ 107.2 Registration and reports by host committees and municipal funds.

Each host committee and municipal fund shall register and report in accordance with 11 CFR 9008.51. The reports shall contain the information specified in 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

5. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

6. Section 110.2 would be amended by adding paragraph (l) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(l) *Expenditures for qualified campaign expenses of a Presidential candidate.* (1) For purposes of this paragraph (l), qualified campaign expense has the same meaning as 11 CFR 9034.10(a).

(2) If a multicandidate political committee makes an expenditure for any qualified campaign expense of a candidate for President, who is not accepting public funding under 11 CFR subchapter E or F, on or after January 1 of the year immediately following the last Presidential election year, the expenditure shall be:

(i) Deemed to be an in-kind contribution by that multicandidate political committee to the authorized committee of the candidate for President; and

(ii) Subject to the contribution limitations set forth in paragraph (b) of this section.

(3) Any expenditure described in paragraph (l)(2) of this section, when aggregated with other contributions to the same candidate for President, that exceed the contribution limitation in paragraph (b) of this section shall be deemed to be an excessive contribution.

PART 9003—ELIGIBILITY FOR PAYMENTS

7. The authority for part 9003 would continue to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

8. Section 9003.3 would be amended by:

a. Revising the introductory language in paragraph (a)(1)(i);

b. Revising paragraph (a)(1)(i)(C);

c. Revising paragraph (a)(1)(v);

d. Revising paragraph (a)(2)(i)(D);

e. Revising paragraph (a)(2)(i)(G);

f. Revising paragraph (a)(2)(i)(H);

g. Adding new paragraph (a)(2)(i)(I);

h. Revising paragraph (a)(2)(iii); and

i. Revising paragraph (a)(2)(iv).

Revisions and additions are to read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) * * *

(1) * * *

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund (''GELAC'') may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before June 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1.

* * * * *

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1)(ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be matched pursuant to 11 CFR 9034.2 shall not be considered designated in writing for the GELAC unless the contributor specifically redesignates it for the GELAC , it is accompanied by a proper designation for the GELAC, or it meets the requirements of 11 CFR 110.1(b)(5)(ii)(B). Any contribution that is designated in writing or redesignated for the GELAC shall not be matched pursuant to 11 CFR 9034.2.

* * * * *

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the GELAC and transferred to the GELAC if the candidate redesignates the contribution for the GELAC in accordance with 11 CFR 110.1.

* * * * *

(2) * * *

(i) * * *

(D) To make repayments under 11 CFR 9007.2, 9038.2, or 9038.3;

* * * * *

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of Federal funds, provided that the amounts so loaned are restored to the GELAC;

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6; and

(I) To defray winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the candidate's primary election committee, general election committee, or both committees. For purposes of this section, 100% of salary, overhead and computer expenses incurred after the end of the expenditure report period shall be considered winding down expenses for legal and accounting compliance activities payable from GELAC funds, and will be presumed to

be solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

* * * * *

(iii) Amounts paid from the GELAC for the purposes permitted by paragraphs (a)(2)(i) (A) through (F), (H) and (I) of this section shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (*See also* 11 CFR 100.146.) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to and funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, after payment of all expenses set out in paragraph (a)(2)(i) of this section, and the completion of the audit and repayment process, including the making of all repayments owed to the United States Treasury by both the candidate's primary and general election committees, funds remaining in the GELAC may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

* * * * *

9. Section 9003.5 would be amended by adding new paragraph (b)(4), to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

10. The authority citation for part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

11. Section 9004.4 would be amended by:

a. Revising the section heading;

b. Revising paragraph (a)(3);

c. Revising paragraph (a)(4) introductory text;

d. Removing paragraph (a)(4)(i);

e. Redesignating paragraph (a)(5) as paragraph (a)(6) and redesignating paragraph (a)(4)(ii) as paragraph (a)(5) and revising newly-designated (a)(5); and

f. Revising paragraph (b)(3).

Revisions, removals, and redesignations are to read as follows:

§ 9004.4 Use of payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period;

(4) To defray winding down costs pursuant to 11 CFR 9004.11; and

(5) To defray costs associated with the candidate's general election campaign paid after the end of the expenditure report period, but incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period.

* * * * *

(b) * * *

(3) *Expenditures incurred after the close of the expenditure report period.* Except for accounts payable costs pursuant to paragraph (a)(5) of this section and winding down cost pursuant to 11 CFR 9004.11, any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses.

* * * * *

12. Section 9004.9 would be amended by revising paragraph (a)(4) to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

(a) * * *

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected end of the winding down period.

* * * * *

13. New section 9004.11 would be added, to read as follows:

§ 9004.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs shall be considered qualified campaign expenses.

(b) *Winding down period.* The candidate may use public funds to pay for winding down costs only until the end of the winding down period. The winding down period begins on the day following the last day of the expenditure report period and continues until no earlier than:

(1) 30 days after the candidate's receipt of a Commission audit report that does not contain a repayment determination;

(2) 60 days after service of notice to the candidate of a Commission repayment determination if the candidate does not file a request for an administrative review of the repayment determination; or

(3) 30 days after service of notice to the candidate of the Commission's post-administrative review repayment determination or 30 days after service of notice of other final action concerning the administrative review.

(c) *Winding down limitation.* The total amount of winding down costs that may be paid for with public funds shall not exceed the lesser of:

(1) 2.5% of the expenditure limitation pursuant to 11 CFR 110.8(a)(2); or

(2) 2.5% of the total of:

(i) The candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus

(ii) The candidate's expenses exempt from the expenditure limitation as of the end of the expenditure report period; except that

(iii) The winding down limitation shall be no less than $100,000.

(d) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any allocation method, including payment of 100% of these expenses by the primary or general election committee.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

14. The authority citation for Part 9008 would be revised to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8), 441i; 26 U.S.C. 9008, 9009(b).

15. Section 9008.3 would be amended by redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(iii) and adding new paragraph (b)(1)(ii), to read as follows:

§ 9008.3 Eligibility for payments; registration and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Each convention committee established by a national committee under paragraph (a)(2) of this section shall submit to the Commission a copy of any and all signed agreements that the convention committee has entered into with the city, county, or State hosting the convention, a host committee, or a municipal fund, including subsequent modifications to previous agreements. Each such agreement or modification shall be filed along with the first report due under paragraph (b)(2) of this section after the agreement or modification is executed.

* * * * *

16. In section 9008.7, paragraph (a)(4) would be revised to read as follows:

§ 9008.7 Use of funds.

(a) * * *

(4) ''Convention expenses'' include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities.

* * * * *

17. Section 9008.8 would be amended by revising the paragraph heading for paragraph (b)(2), revising paragraph (b)(2), and revising paragraph (b)(4)(ii)(B) to read as follows:

§ 9008.8 Limitation of expenditures.

* * * * *

(b) * * *

(2) *Expenditures by municipal funds.* Expenditures made by municipal funds shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

* * * * *

(4) * * *

(ii) * * *

(B) The contributions raised by a Convention Legal and Accounting Fund to pay for legal and accounting services must comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be deposited in a separate account. These contributions shall not exceed $25,000 per person, and $15,000 per multi-candidate political committee in any calendar year.

* * * * *

18. Section 9008.9 would be revised to read as follows:

§ 9008.9 Receipt of goods and services from commercial vendors.

(a) *Standard reductions or discounts.* A commercial vendor may sell, lease, rent or provide goods or services to the national committee with respect to a Presidential nominating convention at reduced or discounted rates, provided that it does so in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under this section need not be reported. For purposes of this section, *commercial vendor* has the same meaning as provided in 11 CFR 116.1(c).

(b) *Expenditure Limits.* The value of goods or services provided pursuant to this section will not count toward the national party's expenditure limitation under 11 CFR 9008.8(a).

19. Section 9008.10 would be amended by revising the introductory language to read as follows:

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

In addition to the requirements set forth at 11 CFR 102.9(b), the convention committee must include as part of the evidence of convention expenses the following documentation:

* * * * *

20. Section 9008.12 would be amended by revising paragraph (b)(7) to read as follows:

§ 9008.12 Repayments.

* * * * *

(b) * * *

(7) The Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a convention expenditure by the host committee or municipal fund that is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of a contribution by the host committee or municipal fund from an impermissible source.

* * * * *

21. Part 9008 would be amended by adding new § 9008.17, to read as follows:

§ 9008.17 Payment for Convention and Host Committee or Municipal Fund Expenses.

(a) *Convention expenses* include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. The following convention expenses may be paid by the convention committee, but shall not be paid by the host committee or municipal fund:

(1) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(2) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(3) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(4) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space;

(5) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(i) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(ii) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fund-raising events, or selection of new national committee officers;

(iii) Entertainment activities sponsored by persons other than the national committee; and

(iv) Entertainment activities prohibited by law;

(6) Expenses for printing convention programs, a journal of proceedings, agendas, and other similar publications;

(7) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention;

(8) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses;

(9) Expenses for gifts or monetary bonuses for national committee or convention committee employees, volunteers and convention officials in recognition for convention-related activities or services, provided that the gifts and bonuses do not exceed $150 total per individual, and the total for all gifts and bonuses does not exceed $20,000;

(10) Expenses for producing biographical films, or similar materials, for use at the convention, about candidates for nomination or election to the office of President or Vice President, but any other political committee(s) that use part or all of the biographical films or materials shall pay the convention committee for the reasonably allocated cost of the biographical films or materials used; and

(11) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

(b) The following expenses may be paid by the convention committee, host committee, or municipal fund. Convention committees, host committees, and municipal funds may use donated funds and in-kind donations they have received for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting or evaluating the suitability of the city as a convention site, including accommodations and hospitality for officials and employees of the convention and national party committees who are responsible for choosing the sites of the conventions;

(2) To provide the convention committee use of an auditorium or convention center and to provide construction and related services for that location to design, create, or install the physical or technological infrastructure for the conduct of the convention, such as: construction of podiums; press facilities; seating; lighting equipment; electrical systems; air conditioning systems; loudspeaker and other communication systems; computer networks; office facilities; office equipment; and other expenses for preparing, maintaining, or dismantling the physical site of the convention, including convention hall utilities;

(3) To defray the costs of various local transportation services that are widely available to convention delegates and other individuals attending the convention, including the provision of buses and automobiles;

(4) To defray the costs of law enforcement and other security services, facilities, and personnel, including tickets, badges, and passes;

(5) To defray the cost of using convention bureau personnel to provide central housing and reservation services; and

(6) To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention.

(c) The following expenses may be paid by the host committee or municipal fund, but shall not be paid by the convention committee. Convention committees are also prohibited from using public funds as specified in 11 CFR 9008.7(b). Host committees and municipal funds may use donated funds and in-kind donations they have received for the following purposes:

(1) To defray those expenses incurred in facilitating commerce, such as providing the convention attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.52(a);

(2) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours; and

(3) To defray the host committee's administrative expenses incurred by the host committee, such as host committee employee compensation and expense reimbursement, host committee office rent, and host committee liability insurance.

(d) *Prohibited uses of donations received by host committees and municipal funds.* Host committees and municipal funds shall not use donated funds or in-kind donations in connection with a national nominating convention for the following purposes:

(1) To provide anything of value to a convention committee, a national political party committee, or any other political committee, except as expressly permitted by paragraphs (b) and (c) of this section; or

(2) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

22. The title of Subpart B of Part 9008 would be revised to read as follows:

Subpart B—Host Committees and Municipal Funds Representing a Convention City

23. Section 9008.50 would be revised to read as follows:

§ 9008.50 Scope and definitions.

(a) *Scope.* This subpart B governs registration and reporting by host committees and municipal funds representing convention cities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees and municipal funds. In addition, subpart B describes permissible disbursements by host committees and municipal funds to defray convention expenses and to promote the convention city and its commerce.

(b) *Definition of host committee.* A *host committee* includes any local organization, such as a local civil association, business league, chamber of commerce, real estate board, board of trade, or convention bureau that satisfies all of the following conditions:

(1) It is not organized for profit;

(2) Its net earnings do not inure to the benefit of any private shareholder or individual; and

(3) Its principal purpose is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.

(c) *Definition of municipal fund.* A *municipal fund* is any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government.

24. Section 9008.51 would be amended by:

a. Revising the paragraph heading for paragraph (a);

b. Revising paragraph (a)(1);

c. Adding paragraph (a)(3);

d. Revising paragraph (b); and

e. Deleting paragraph (c).

The revisions, additions, and deletions are to read as follows:

§ 9008.51 Registration and reports.

(a) *Registration by host committees and municipal funds.*

(1) Each host committee and municipal fund shall register with the Commission by filing a *Statement of Organization* on FEC Form 1 within 10 days of the date on which such party chooses the convention city, or within 10 days after the formation of the host committee or municipal fund, whichever is later. In addition to the information already required to be provided on FEC Form 1, the following information shall be disclosed by the registering entity on FEC Form 1: The name and address; the name and address of its officers; and a list of the activities that the registering entity plans to undertake in connection with the convention.

* * * * *

(3) Each host committee and municipal fund required to register with the Commission under paragraph (a) of this section, shall submit to the Commission a copy of any and all signed agreements that they have entered into with the city, county, or State hosting the convention, a host committee, a municipal fund, or a convention committee, including subsequent modifications to previous agreements, unless such agreements or modifications have already been submitted to the Commission by the convention committee. Each such agreement or modification shall be filed along with the first report due under paragraph (b) of this section after the agreement or modification is executed.

(b) *Post-convention and quarterly reports by host committees and municipal funds; content and time of filing.* (1) Each host committee or municipal fund required to register with the Commission pursuant to paragraph (a) of this section shall file a post convention report on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall be complete as of 15 days prior to the date on which the report must be filed and shall disclose all the information required by 11 CFR part 104 with respect to all activities related to a presidential nominating convention.

(2) If such host committee or municipal fund has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 15 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee or municipal fund ceases all activity that must be reported under this section.

(3) Such host committee or municipal fund shall file a final report with the Commission not later than 10 days after it ceases activity that must be reported under this section, unless such status is reflected in either the post-convention report or a quarterly report.

Alternative to § 9008.17

25. Section 9008.52 would be revised to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

(a) *Receipt of goods or services from commercial vendors.* (1) *Definition of ''commercial vendor.''* For purposes of this section, *commercial vendor* has the same meaning as provided in 11 CFR 116.1(c).

(2) *Standard reductions or discounts.* Commercial vendors may sell, lease, rent or provide their goods or services to the host committee at reduced or discounted rates, or at no charge, provided that they do so in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions of discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under this section need not be reported.

(3) *Items provided for promotional consideration.* (i) A commercial vendor may provide goods or services to a host committee in exchange for promotional consideration provided that doing so is in the ordinary course of business.

(ii) The provision of goods or services shall be considered in the ordinary course of business under this paragraph:

(A) If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or

(B) If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.

(iii) In all cases, the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.

(iv) The host committee shall maintain documentation showing: the goods or services provided; the date(s) on which the goods or services were provided; the terms and conditions of the arrangement; and what promotional consideration was provided. In addition, the host committee shall disclose in its report covering the period the goods or services are received in a memo entry, a description of the goods or services provided for promotional consideration, the name and address of the commercial vendor, and the dates on which the goods or services was provided (*e.g.*, ''Generic Motor Co., Detroit, Michigan—ten automobiles for use 7/15–7/20, received on 7/14'', or ''Workers Inc., New York, New York—five temporary secretarial assistants to work 8/1–8/30, received on 8/1'').

(4) *Items of de minimis value.* Commercial vendors (including banks) may sell at nominal cost, or provide at no charge, items of *de minimis* value, such as samples, discount coupons, maps, pens, pencils, or other items included in tote bags for those attending the convention. The items of *de minimis* value may be distributed by or with the help of persons employed by the commercial vendor, or employed by or volunteering for a host committee. The value of the items of *de minimis* value provided under this paragraph need not be reported.

(b) *Receipt of donations from businesses, organizations, and individuals.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a host committee to be used only for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site, including accommodations and hospitality for officials and employees of the convention and national party committees who are responsible for choosing the sites of the conventions;

(2) To defray those expenses incurred in facilitating commerce, such as providing the convention attendees with shopping and entertainment guides and distributing the samples and promotional material specified in paragraph (a) of this section;

(3) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(4) To defray the host committee's administrative expenses incurred by the host committee, such as host committee

employee compensation and expense reimbursement, host committee office rent, and host committee liability insurance;

(5) To provide the convention committee use of an auditorium or convention center and to provide construction and related services for that location to design, create, or install the physical or technological infrastructure for the conduct of the convention, such as: construction of podiums; press facilities; seating; lighting equipment; electrical systems; air conditioning systems; loudspeaker and other communication systems; computer networks; office facilities; office equipment; and other expenses for preparing, maintaining, or dismantling the physical site of the convention, including convention hall utilities;

(6) To defray the costs of various local transportation services that are widely available to convention delegates and other individuals attending the convention, including the provision of buses and automobiles;

(7) To defray the costs of law enforcement and other security services, facilities, and personnel, including tickets, badges, and passes;

(8) To defray the cost of using convention bureau personnel to provide central housing and reservation services; and

(9) To provide hotel rooms for the rate paid by the host committee, including either at no charge or at a reduced rate on the basis of the number of rooms actually booked for the convention.

(c) *Prohibited uses of donations received by host committees.* Host committees shall not use donated funds or in-kind donations in connection with a national nominating convention for the following purposes:

(1) To provide anything of value to a convention committee, a national political party committee, or any other political committee, except as expressly permitted by paragraphs (b)(1) and (b)(5) through (8) of this section; or

(2) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

26. Section 9008.53 would be revised to read as follows:

§ 9008.53 Receipts and disbursements of municipal funds.

(a) *Receipt of goods and services provided by commercial vendors.* Municipal funds may accept goods or services from commercial vendors for convention uses under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.52 for host committees.

(b) *Receipt and use of donations to a municipal fund.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a municipal fund to pay for expenses listed in 11 CFR 9008.52(b), provided that such funds or in-kind donations shall not be used for the expenses listed in 11 CFR 9008.52(c).

27. Section 9008.55 would be added to read as follows:

§ 9008.55 Solicitation of non-Federal funds for host committees and municipal funds.

(a) Host committee and municipal fund payments made in compliance with this part shall be deemed *disbursements in connection with a Federal election* for purposes of 11 CFR part 300.

(b) Host committees and municipal funds shall not be eligible to make the certification pursuant to 11 CFR 300.11(d).

(c) Host committees and municipal funds shall not be eligible for the exception in 11 CFR 300.65.

PART 9032—DEFINITIONS

28. The authority for part 9032 would continue to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

29. Section 9032.9 would be amended by revising paragraph (c) to read as follows:

§ 9032.9 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either prior to the date the individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

PART 9033—ELIGIBILITY FOR PAYMENTS

30. The authority citation for part 9033 would continue to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

31. Section 9033.11 would be amended by adding new paragraph (b)(4), to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9034—ENTITLEMENTS

32. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

33. Section 9034.4 would be amended by:

a. Revising the section heading;
b. Revising paragraph (a)(3)(i);
c. Revising paragraph (a)(3)(ii);
d. Removing paragraph (a)(3)(iii);
e. Adding paragraph (a)(6); and
f. Revising paragraph (b)(3).

Revisions and additions are to read as follows:

§ 9034.4 Use of contributions and matching payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) * * *

(i) Winding down costs subject to the restrictions in 11 CFR 9034.11 shall be considered qualified campaign expenses.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under 11 CFR 9034.11. Each contribution made, dated and received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

* * * * *

(6) Certain expenses incurred by ineligible candidates attending national nominating conventions.

(i) Expenses incurred by a candidate after the candidate's date of ineligibility to conduct a specific fundraising event at a national nominating convention needed to retire the candidate's net outstanding campaign obligations may be treated as qualified campaign expenses. The costs of the candidate's travel to attend such fundraising events, as well as the travel expenses of campaign staff who participate in the organization and administration of such events, may be treated as qualified campaign expenses. Travel costs consist of transportation, hotel or other lodging, and per diem subsistence for the candidate, the candidate's spouse, and campaign staff and volunteers who organize or administer the fundraising event. Expenses allocable to participation by the candidate or campaign staff in the national nominating convention, any other activities related to the convention, or any other activities conducted by the political party, other than such candidate fundraising events, are non-qualified campaign expenses. Expenses related to such a fundraising event may be treated as qualified campaign expenses only to the extent that, on the date of the fundraising event, the candidate has net outstanding campaign obligations pursuant to 11 CFR 9034.1(b).

(ii) Expenses incurred by a candidate after the candidate's date of ineligibility attributable to a meeting, reception, or other event at a national nominating convention to thank campaign employees, consultants and volunteers pursuant to paragraph (a)(5) of this section, may be treated as qualified campaign expenses so long as such a meeting, reception or event is restricted to attendees who served the candidate's primary campaign as employees, consultants, or volunteers. Travel expenses for the candidate to attend such events or for campaign staff who organize such events at the national nominating convention are not qualified campaign expenses.

(b) * * *

(3) *General election and post-ineligibility expenditures.* Except for continuing to campaign costs and winding down costs pursuant to paragraph (a)(3) of this section and certain convention expenses described in paragraph (a)(6) of this section, any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses. In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

* * * * *

34. Section 9034.5 would be amended by revising paragraph (b)(2) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(b) * * *

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected end of the winding down period.

* * * * *

35. Section 9034.10 would be added to read as follows:

§ 9034.10 Expenditures for qualified campaign expenses by multicandidate political committees.

(a) *Definition.* For purposes of this section, qualified campaign expense means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by, on behalf of, or for the benefit of a candidate or the candidate's authorized committee; and

(2) Made in connection with a candidate's campaign for nomination.

(3) Examples of a qualified campaign expense include, but are not limited to:

(i) Polling expenses;

(ii) Travel expenses;

(iii) Staff salaries; and

(iv) Office space expenses.

(b) If a multicandidate political committee makes an expenditure for any qualified campaign expense of a candidate on or after January 1 of the year immediately following the last Presidential election year, the expenditure shall be:

(1) Deemed to be an in-kind contribution by that multicandidate political committee to the authorized committee of the candidate and subject to the provision of 11 CFR 9035.1(a)(3)(iv);

(2) Subject to the contribution limitations set forth in 11 CFR 110.2(b);

(3) Included in the expenditures subject to the expenditure limitations in 11 CFR part 9035; and

(4) Subject to the provisions of 11 CFR 9038.1.

(c) Any expenditure described in paragraph (b) of this section, when aggregated with other contributions to the same candidate, that exceed the contribution limitation in 11 CFR 110.2(b) shall be deemed to be an excessive contribution.

36. New section 9034.11 would be added, to read as follows:

§ 9034.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs shall be considered qualified campaign expenses.

(b) *Winding down period.* The candidate may use matching funds to pay for winding down costs only until the end of the winding down period. The *winding down period* begins on the day following the candidate's date of ineligibility for candidates who do not run in the general election, or on the day following the date 30 days after the general election for candidates who run in the general election, and continues until no earlier than:

(1) 30 days after the candidate's receipt of a Commission audit report that does not contain a repayment determination;

(2) 60 days after service of notice to the candidate of a Commission repayment determination if the candidate does not file a request for an administrative review of the repayment determination; or

(3) 30 days after service of notice to the candidate of the Commission's post-administrative review repayment determination or 30 days after service of notice of the Commission's determination that no repayment is owed.

(c) *Winding down limitation.* The total amount of winding down costs that may be paid for, in whole or part, with matching funds shall not exceed the lesser of:

(1) 5% of the overall expenditure limitation pursuant to 11 CFR 9035.1; or

(2) 5% of the total of:

(i) The candidate's expenditures subject to the overall expenditure

limitation as of the candidate's date of ineligibility; plus

(ii) The candidate's expenses exempt from the expenditure limitations as of the candidate's date of ineligibility; except that

(iii) The winding down limitation shall be no less than $100,000.

(d) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any allocation method, including payment of 100% of these expenses by the primary or general election committee.

(e) *Primary winding down costs during the general election period.* A primary election candidate who does not run in the general election may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention. A primary election candidate who runs in the general election, regardless of whether the candidate receives public funds for the general election, must wait until 31 days after the general election before using any matching funds for winding down costs related to the primary election. No expenses incurred by a primary election candidate who runs in the general election prior to 31 days after the general election shall be considered primary winding down costs.

PART 9035—EXPENDITURE LIMITATIONS

37. The authority citation for Part 9035 would continue to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

38. Section 9035.1 would be amended by:

a. Adding new paragraph (a)(3);

b. Adding new paragraph (a)(4);

c. Revising the paragraph heading in paragraph (c);

d. Revising paragraph (c)(1); and

e. Adding new paragraph (c)(3).

Additions and revisions are to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) * * *

(3) In addition to expenditures made by a candidate or the candidate's authorized committee(s) using campaign funds, the Commission will attribute to the candidate's overall expenditure limitation and to the expenditure limitations of particular states under 11 CFR 110.8 the total amount of all:

(i) Coordinated expenditures under 11 CFR 109.20;

(ii) Coordinated communications under 11 CFR 109.21 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents, under 11 CFR 109.21(b);

(iii) Coordinated party expenditures, including party coordinated communications pursuant to 11 CFR 109.37 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents under 11 CFR 109.37(a)(3), and that exceed the coordinated party expenditure limitation for the presidential general election at 11 CFR 109.32(a); and

(iv) Other in-kind contributions received or accepted by the candidate or the candidate's authorized committee(s) or agents.

(4) The amount of each in-kind contribution attributed to the expenditure limitations under this section is the usual and normal charge for the goods or services provided to the candidate or the candidate's authorized committee(s) as an in-kind contribution.

* * * * *

(c) *Compliance, fundraising and shortfall exemptions.*

(1) A candidate may exclude from the overall expenditure limitation set forth in paragraph (a) of this section an amount equal to 15% of the overall expenditure limitation as exempt legal and accounting compliance costs under 11 CFR 100.146. In the case of a candidate who does not run in the general election, for purposes of the expenditure limitations set forth in this section, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. Candidates who continue to campaign or re-establish eligibility may not treat 100% of salary, overhead and computer expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign as exempt legal and accounting compliance expenses. For purposes of the expenditure limitations set forth in this section, candidates who run in the general election, regardless of whether they receive public funds, must wait until the day following the date 30 days after the general election before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * * *

(3) A candidate may exclude from the overall expenditure limitation of this section 5% of the amount of any matching funds to which the candidate was entitled that were not paid to the candidate, or were paid on a date subsequent to the date on which payment of such matching funds was due to the candidate, because of a shortfall in the matching payment account.

* * * * *

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

39. The authority citation for Part 9036 would continue to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

40. Section 9036.1 would be amended by revising paragraph (b)(1)(ii) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(1) * * *

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in an election cycle;

* * * * *

41. Section 9036.2 would be amended revising paragraph (b)(1)(v) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the election cycle, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

42. The authority citation for Part 9038 would continue to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

43. Section 9038.1 would be amended by revising paragraph (a)(2) to read as follows:

§ 9038.1 Audit.

(a) * * *

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter, including examinations and audits of multicandidate political committees operating under 11 CFR 9034.10.

* * * * *

44. Section 9038.2 would be amended by:

a. Revising paragraph (b)(2)(ii)(A);

b. Revising the introductory text of paragraph (b)(2)(iii); and

c. Revising paragraph (b)(4).

Revisions are to read as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035, by either making disbursements that are expenditures or by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3);

* * * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to: the candidate's total deposits, as of 90 days after the candidate's date of ineligibility plus the usual and normal charge for all goods or services provided as in-kind contributions. For the purposes of this paragraph (b)(2)(iii)—

* * * * *

(4) The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from an investment or other use of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, shall be paid to the Treasury.

* * * * *

Dated: April 7, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–8761 Filed 4–14–03; 8:45 am]

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Federal Register

Tuesday,
April 15, 2003

Part V

Department of Homeland Security

6 CFR Part 29

Procedures for Handling Critical Infrastructure Information; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 29

RIN 1601–AA14

Procedures for Handling Critical Infrastructure Information

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking establishes for Federal agencies the uniform procedures to implement Section 214 of the Homeland Security Act of 2002 regarding the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal Government. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism.

DATES: Written comments on this notice of proposed rulemaking may be submitted to the Department of Homeland Security on or before June 16, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. Electronic comments may be submitted to *cii.regcomments@DHS.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Nolan, (202) 282–8495, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS) and established its responsibilities. Pursuant to the provisions of the Act, the Department came into existence on January 24, 2003.

The responsibilities of the Department include the taking of action to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to acts of terrorism. The reduction of that vulnerability includes the protection of vital physical or computer-based systems and assets, collectively referred to as ''critical infrastructure,'' the incapacitation or destruction of which would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of these matters. The Department of Homeland Security recognizes the importance of receiving information from those with direct knowledge on the security of that critical infrastructure in order to reduce the vulnerability of this critical infrastructure to acts of terrorism.

The Department recognizes that its receipt of information pertaining to the security of critical infrastructure, much of which is not customarily within the public domain, is best encouraged through the assurance that such information will be utilized for securing the United States and will not be disseminated to the general public. Accordingly, section 214 of the Homeland Security Act, subtitle B of Title 2, which is referenced as the Critical Infrastructure Information Act of 2002 (''CII Act''), provides for the establishment of a critical infrastructure protection program that protects from disclosure to the general public any critical infrastructure information which the public may voluntarily provide to the Department.

Although the Homeland Security Act establishes a working definition of critical infrastructure information, the Department relies upon the discretion of the submitter as to whether the volunteered information meets the definition of critical infrastructure information. These procedures establish how critical infrastructure information volunteered by the public will be protected pursuant to section 214 of the Homeland Security Act.

II. Notice of Proposed Rulemaking

This notice of proposed rulemaking establishes the procedures for protecting critical infrastructure information which are referenced in section 214(e) of the CII Act of 2002.

This regulation establishes uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily provided to the Federal Government by the public. These procedures apply to all Federal agencies that receive, care for, or store CII that is voluntarily submitted to the Federal Government pursuant to the CII Act of 2002. 6 U.S.C. 130, *et seq.* In addition, these procedures apply to United States Government contractors, to Foreign, State, and local governments, and to government authorities, pursuant to their express agreements.

III. Procedural Requirements

In recognition of the importance of these procedures, the Department is providing this notice of proposed rulemaking of uniform procedures for the receipt, care, and storage of voluntarily submitted CII. As these procedures will affect Federal, State, and local governments and entities, the Department recognizes the importance of providing the opportunity for comment upon these procedures by both the government and private sector.

Executive Order 12866

It has been determined that this rulemaking is a significant regulatory action for purposes of section 3(f)(4) of Executive Order 12866. This rulemaking is, however, not considered an economically significant regulatory action for the purposes of Executive Order 12866. This rulemaking has been reviewed and approved by the Office of Management and Budget.

Regulatory Flexibility Act Certification

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Paperwork Reduction Act of 1995

OMB does not consider nonspecific or nondirective reporting—such as the information requested in the rule—that the respondent wishes to provide on a specific topic without further specification being sought to be subject to the Paperwork Reduction Act.

List of Subjects in 6 CFR Part 29

Classified information, Confidential business information, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, 6 CFR is proposed to be amended by adding part 29 to read as follows:

PART 29—CRITICAL INFRASTRUCTURE INFORMATION

Sec.
29.1 Purpose and scope.
29.2 Definitions.
29.3 Effect of provisions.
29.4 Critical Infrastructure Information Program administration.
29.5 Authority to receive Critical Infrastructure Information.
29.6 Acknowledgment, validation, and marking of receipt.
29.7 Safeguarding of protected Critical Infrastructure Information.
29.8 Disclosure of information.
29.9 Investigation and reporting of violation of CII procedures.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

§ 29.1 Purpose and Scope.

(a) *Purpose.* This part implements Section 214 of Title II, Subtitle B, of the Homeland Security Act of 2002 through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII)

voluntarily submitted to the Federal Government. Title II, Subtitle B, of the Homeland Security Act is referred to herein as the CII Act of 2002. It is Department of Homeland Security (DHS) policy to encourage the voluntary submission of CII by protecting that information from unauthorized disclosure to the fullest extent permitted by law. As required by the CII Act of 2002, the procedures established herein include mechanisms regarding:

(1) The acknowledgement of receipt by a Federal agency of critical infrastructure information voluntarily submitted to the Federal Government;

(2) The maintenance of the identification of critical infrastructure information voluntarily submitted to the Federal Government for purposes of and subject to the provisions of the CII Act of 2002;

(3) The receipt, care, storage, and proper marking of the information as Protected CII;

(4) The protection and maintenance of the confidentiality of such information that permits the sharing of such information within the Federal Government and with Foreign, State, and local governments; and

(5) The issuance of notices and warnings related to the protection of critical infrastructure and protected systems in such a manner to protect from public disclosure the identity of the submitting person or entity, as well as information that is proprietary, business-sensitive, relates specifically to the submitting person or entity, and/or is not appropriately in the public domain.

(b) *Scope.* These procedures apply to all Federal agencies that receive, care for, or store CII voluntarily submitted to the Federal Government pursuant to the CII Act of 2002. In addition, these procedures apply to United States Government contractors, to Foreign, State, and local governments, and government authorities, pursuant to their express agreements.

§ 29.2 Definitions.

For purposes of this part:

(a) *Critical Infrastructure* has the same definition as described in section 2 of the Homeland Security Act of 2002, and means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination thereof.

(b) *Critical Infrastructure Information or CII* means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. CII consists of records or information concerning:

(1) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms the interstate commerce of the United States, or threatens public health or safety;

(2) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(3) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(c) *Critical Infrastructure Information Program or ''CII Program''* means the maintenance, management, and review of these procedures and of the information provided to DHS in expectation of the protections provided by the CII Act of 2002.

(d) *Information Sharing and Analysis Organization or ISAO* means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of:

(1) Gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems to ensure the availability, integrity, and reliability thereof;

(2) Communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of an interference, compromise, or an incapacitation problem related to critical infrastructure or protected systems; and

(3) Voluntarily disseminating critical infrastructure information to its members, Federal, State, and local governments, or any other entities that may be of assistance in carrying out the purposes specified in paragraphs (d)(1) and (d)(2) of this section.

(e) *Local Government* has the same meaning as established in section 2 of the Homeland Security Act of 2002, and means:

(1) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(2) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(3) A rural community, unincorporated town or village, or other public entity.

(f) *Protected Critical Infrastructure Information or Protected CII* means CII (including the identity of the submitting person or entity) that is voluntarily submitted to DHS for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement as described in § 29.5 of this chapter. This information maintains its protected status unless the CII Program Manager renders a final decision that the information is not Protected CII.

(g) *Protected System* means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure and includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(h) *Purpose* has the meaning as described in section 214(a)(1) of the CII Act of 2002, and includes the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose.

(i) *Submission to DHS* as referenced in these procedures means any transmittal of CII from any entity to DHS. The CII may be provided to DHS either directly or indirectly via another Federal agency, which, upon receipt of the CII, will forward it to DHS.

(j) *Voluntary or Voluntarily,* when used in reference to any submission of

CII to DHS, means submitted in the absence of DHS's exercise of legal authority to compel access to or submission of such information; such submission may be accomplished by (*i.e.* come from) a single entity or an ISAO on behalf of itself or its members. The term does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings. In the case of any action brought under the securities laws—as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the term ''voluntary'' does not include information or statements contained in any documents or materials filed, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) with the Securities and Exchange Commission or with Federal banking regulators; and with respect to the submission of CII, it does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities.

§ 29.3 Effect of provisions.

(a) *Freedom of Information Act access and mandatory submissions of information.* The CII Act of 2002 and these procedures do not apply to or affect any requirement pertaining to information that must be submitted to a Federal agency or pertaining to the obligation of any Federal agency to disclose such information under the Freedom of Information Act. Similarly, the CII Act of 2002 and these procedures do not apply to any information that is submitted to a Federal agency pursuant to any legal requirement. The fact that a person or entity has voluntarily submitted information pursuant to the CII Act of 2002 does not constitute compliance with any requirement to submit that information or any other such information to a Federal agency under any other provision of law. Moreover, when information is required to be submitted to a Federal agency to satisfy a provision of law, it is not to be marked by the submitter, by DHS, or by any other party, as submitted or protected under the CII Act of 2002 or to be otherwise afforded the protections of the CII Act of 2002.

(b) *Freedom of Information Act disclosure exemptions.* Information that is separately exempt from disclosure under the Freedom of Information Act or applicable State or local law does not lose its separate exemption protection due to the applicability of these procedures or any failure to follow them.

(c) *Restriction on use of protected CII by regulatory and other federal agencies.* No Federal agency shall request, obtain, maintain, or use information protected under the CII Act of 2002 as a substitute for the exercise of its own legal authority to compel access to or submission of such information. Federal agencies shall not utilize CII for regulatory purposes without the written consent of the submitter.

(d) *Independently obtained information.* These procedures shall not be construed to limit or in any way affect the ability of a Federal, State, or local Government entity, agency, or authority, or any third party, under applicable law, to obtain information by means of a different law, regulation, rule, or other authority.

(e) *No private rights or privileges.* Nothing contained in these procedures is intended to confer any substantive or procedural right or privilege on any person or entity. Nothing in these procedures shall be construed to create a private right of action for enforcement of any provision of these procedures or a defense to noncompliance with any independently applicable legal obligation.

§ 29.4 Critical Infrastructure Information Program administration.

(a) *IAIP Directorate Program Management.* The Secretary of the Department of Homeland Security shall designate the Under Secretary of the Information Analysis Infrastructure Protection (IAIP) Directorate as the senior DHS official responsible for the direction and administration of the Critical Infrastructure Information Program.

(b) *Appointment of CII Program Manager.* The Under Secretary of IAIP shall:

(1) Appoint a CII Program Manager within the IAIP Directorate to direct and administer the CII Program;

(2) Commit necessary resources to the effective implementation of the CII Program; and

(3) Promulgate implementing directives and prepare training materials as necessary for the proper treatment of Protected CII.

(c) *Appointment of CII Officers.* The CII Program Manager shall establish procedures to ensure that any DHS component or other entity that works with Protected CII appoints one or more employees to serve as a CII Officer for the activity in order to provide proper management and oversight. Persons appointed to these positions shall be fully familiar with these procedures.

(d) *Responsibilities of a CII Officer.* The CII Officer shall:

(1) Oversee the storage and handling of Protected CII;

(2) Establish and maintain an ongoing self-inspection program, to include periodic review and assessment of the entity's storage, handling, and use of Protected CII;

(3) Establish additional procedures as necessary to prevent unauthorized access to Protected CII; and

(4) Ensure prompt and appropriate coordination with the CII Program Manager regarding any request, appeal, challenge, complaint, or suggestion arising out of the implementation of these procedures.

(e) *Critical Infrastructure Information Management System (CIIMS),* The CII Program Manager shall develop and use an electronic database, to be known as the ''Critical Infrastructure Information Management System'' (CIIMS), to record the receipt, acknowledgement, validation, storage, destruction, and disclosure of Protected CII. This compilation of CII shall be protected by the provisions of the CII Act of 2002.

§ 29.5 Authority to receive Critical Infrastructure Information.

(a) The Secretary of Homeland Security shall designate the DHS IAIP Directorate as the sole entity authorized to acknowledge and validate the receipt of Protected CII.

(b) CII shall receive the protections of section 214 of the CII Act of 2002 only when:

(1) Such information is voluntarily submitted either directly to the IAIP Directorate or indirectly to the DHS IAIP Directorate by submitting it to any Federal agency which then, pursuant to the submitter's express direction, forwards the information to the DHS IAIP Directorate;

(2) The information is submitted for use by DHS for the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes, as evidenced below, and

(3) The information is accompanied by an express statement as follows:

(i) In the case of written information or records, through a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002''; or

(ii) In the case of oral information, within fifteen (15) calendar days of the

oral submission, through a written statement similar to the one above accompanied by a written or otherwise tangible version of the oral information initially provided.

(c) Information that is not submitted to the CII Program Manager, either directly by the submitter or indirectly through another Federal agency by request of the submitter, will not qualify for protection under the CII Act of 2002. Any Federal agency or DHS component, other than the IAIP Directorate, that receives information with a request for protection under the CII Act of 2002 shall forward the information to the CII Program Manager. Only the CII Program Manager, or the Program Manager's designee, is authorized to acknowledge and validate the receipt of Protected CII.

(d)(1) Federal agencies, or DHS components other than the IAIP Directorate, shall maintain information as protected by the provisions of the CII Act of 2002 only:

(i) When that information is provided to the agency or component by the CII Program Manager, or his designee, and is marked ''Protected CII''; or

(ii) When the information is provided to the agency or component by the submitter pursuant to paragraph (b) of this section, that information is forwarded to the CII Program Manager pursuant to paragraph (c) of this section, and the CII Program Manager acknowledges and validates the information as ''Protected CII'' and authorizes the agency or component to mark the information as ''Protected CII''.

(2) The Federal agency or DHS component forwarding the information to the CII Program Manager may not disseminate, distribute, or make public the information until the CII Program Manager has notified the agency or component that the Program Manager has acknowledged and validated the information.

§ 29.6 Acknowledgment, validation, and marking of receipt.

(a) *Authorized official.* Only the CII Program Manager, or the Program Manager's designee, is authorized to acknowledge and validate the receipt of information as Protected CII.

(b) *Presumption of Protection.* All information submitted in accordance with the procedures set forth herein will be presumed to be treated as Protected CII from the time the information is received by a Federal agency or DHS component. The information shall remain protected unless and until the CII Program Manager renders a final decision that the information is not Protected CII.

(c) *Marking of information.* In addition to markings made by submitters of CII pursuant to § 29.5(b), all Protected CII shall be clearly identified through markings made by the CII Program Manager. The CII Program Manager shall mark CII materials as follows: ''Protected Critical Infrastructure Information.''

(d) *Acknowledgement of receipt of information.* The CII Program Manager, or the Program Manager's designee, shall acknowledge receipt of information submitted as Protected CII, and in so doing shall:

(1) Contact the submitter, by the means specified in § 29.7(e), within thirty (30) days of receipt;

(2) Maintain a database including date of receipt, name of submitter, description of information, and date and manner of acknowledgment; and

(1) At a minimum, provide the submitter with a unique tracking number whenever the information is provided to the CII Program Manager electronically by submission through an internet-enabled DHS on-line incident reporting form.

(e) *Validation of information.* (1) The CII Program Manager shall be responsible for reviewing all submissions that request protection under the CII Act of 2002. The Program Manager shall review the submitted information to validate the satisfaction of the definition of CII as established by law. In making this initial validation determination, the Program Manager shall give deference to the submitter's expectation that the information qualifies for protection. However, if the Program Manager makes an initial determination that some or all of the information submitted does not meet the requirements for protection under the CII Act of 2002, the CII Program Manager shall:

(i) Notify the submitter of the initial determination that the information is not considered to be Protected CII. This notification also shall:

(A) Request that the submitter further explain the nature of the information and the submitter's basis for believing the information qualifies for protection under the CII Act of 2002;

(B) Advise the submitter that the CII Program Manager will review any further information provided before rendering a final determination;

(C) Notify the submitter that any response to the notification must be received by the CII Program Manager no later than thirty (30) days after the date of the notification; and

(D) Request the submitter to state whether, in the event the CII Program Manager makes a final determination that any such information is not Protected CII, the submitter prefers that the information be maintained without the protections of the CII Act of 2002 or be disposed of in accordance with the Federal Records Act.

(ii) If the CII Program Manager makes a final determination that the information is not Protected CII, the Program Manager, per the submitter's stated preference, shall either maintain the information without the protections of the CII Act of 2002 or dispose of it in accordance with the Federal Records Act. If the submitter, however, cannot be notified or the submitter's response is not received within thirty (30) days after the submitter received the notification, the Program Manager shall destroy the information in accordance with the Federal Records Act unless the Program Manager determines that there is a need to retain it for law enforcement and/or national security reasons.

(2) [Reserved]

(f) In the event the CII Program Manager determines that any information is not submitted in good faith accordance with the CII Act of 2002 and these procedures, the Program Manager is not required to notify the submitter that the information does not qualify as Protected CII. This is the only exception to the notice requirement of these procedures.

(g) *Changing the status of CII to Non-CII.* Only the CII Program Manager or the Program Manager's designee may change the status of Protected CII to non-Protected CII and remove its Protected CII markings.

§ 29.7 Safeguarding of protected Critical Infrastructure Information.

(a) All persons granted access to Protected CII are responsible for safeguarding all such information in their possession or control. Protected CII shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized by the CII Officer to receive it. Each person who works with Protected CII is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

(b) *Use and storage.* During working hours, reasonable steps shall be taken to minimize the risk of access to Protected CII by unauthorized personnel. After working hours, Protected CII shall be stored in a secure container, such as a locked desk or file cabinet, or in a facility where Government or Government-contract security is provided.

(c) *Reproduction.* A document or material containing Protected CII may

be reproduced to the minimum extent necessary consistent with the need to carry out official duties, provided that the reproduced material is marked and protected in the same manner as the original material.

(d) *Disposal of information.* Material containing Protected CII shall be disposed of by any method that prevents unauthorized retrieval.

(e) *Transmission of information.* Protected CII shall be transmitted only by U.S. first class, express, certified, or registered mail, or through secure electronic means.

(f) Automated Information Systems that contain CII shall comply with the requirements of the Federal Information Security Management Act of 2002, 44 U.S.C. 3531–3538, implementing policy, and Office of Management and Budget Circular No. A–130, Appendix III.

§ 29.8 Disclosure of information.

(a) *Authorization of access.* The Under Secretary of IAIP, or his or her designee, may choose to provide or authorize access to Protected CII when it is determined that this access supports a lawful and authorized Government purpose as enumerated in the CII Act of 2002, other law, regulation, or legal authority.

(b) *Federal, State and Local Government access.* The CII Program Manager may provide Protected CII to an employee of the Federal Government, or of a State or local government, provided that such information is shared for purposes of securing the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or for another informational purpose relating to homeland security. Protected CII may be made available to a State or local government entity only pursuant to its express agreement with the Program Manager that acknowledges the understanding and responsibilities of the recipient.

(c) *Disclosure of information to Federal contractors.* Disclosure of Protected CII to Federal contractors may be made after a CII Officer certifies that the contractor is performing services in support of the purposes of DHS. The contractor shall safeguard Protected CII in accordance with these procedures. Contractors shall not further disclose Protected CII to any of their components, employees, or other contractors (including subcontractors) without the prior written approval of a CII Officer unless such disclosure is expressly authorized in writing by the submitter.

(d) *Further use or disclosure of information by State and Local governments.* (1) State and local governments receiving information marked ''Protected Critical Infrastructure Information'' shall not disclose that information to any other party, or remove any CII markings, without first obtaining authorization from the CII Program Manager, who shall be responsible for requesting and obtaining written consent for any such State or local government disclosure from the person or entity that submitted the information.

(2) The CII Program Manager may not authorize State and local governments to further disclose or distribute the information to another party unless the Program Manager first obtains the written consent of the person or entity submitting the information.

(3) State and local governments may use Protected CII only for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(e) *Disclosure of information to appropriate entities and the general public.* The IAIP Directorate may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other government entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the IAIP Directorate shall protect from disclosure the source of any voluntarily submitted CII that forms the basis for the warning; and any information that is proprietary, business-sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(f) *Access by Congress and whistleblower protection.* (1)(i) Pursuant to section 214(a)(1)(D) of the Homeland Security Act, Protected CII shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of the CII Act of 2002, except—

(A) In furtherance of an investigation or the prosecution of a criminal act; or

(B) When disclosure of the information is made—

(*1*) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(*2*) To the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(ii) If any disclosure is made pursuant to these exceptions, prior written authorization must be obtained, in consultation with the DHS Office of the General Counsel, from the DHS Secretary, DHS Deputy Secretary, Under Secretary for IAIP, the DHS Inspector General, or the CII Program Manager.

(2) Consistent with the authority to disclose information for any purpose described in § 29.2(h), disclosure of Protected CII may be made, without the written consent of the person or entity submitting such information, to the DHS Inspector General, or to any other employee designated by the Secretary of Homeland Security. Disclosure may be made by any officer or employee of the United States who reasonably believes that such information:

(i) Evidences an employee's or agency's conduct in violation of criminal law, or any other law, rule, or regulation, affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution; or

(ii) Evidences mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution.

(3) Disclosures of the above nature are authorized by law and therefore are not subject to penalty under section 214(f) of the Homeland Security Act of 2002.

(g) *Responding to requests made under the Freedom of Information Act or State/local information access laws.* (1) Protected CII shall be treated as exempt from disclosure under the Freedom of Information Act and, if provided by the CII Program Manager, or the Program Manager's designee, to a State or local government agency, entity or authority, or an employee or contractor thereof, shall not be made available pursuant to any State or local law requiring disclosure of records or information. Any Federal, State, or local government agency with questions regarding the protection of Protected CII from public disclosure shall contact the CII Program Manager, who may in turn consult with the DHS Office of the General Counsel.

(2) These procedures do not limit or otherwise affect the ability of a State or local government entity, agency, or authority to obtain information directly from the same person or entity voluntarily submitting information to

DHS. Information independently obtained by a State or local government entity, agency, or authority is not subject to the CII Act of 2002's prohibition on making such information available pursuant to any State or local law requiring disclosure of records or information.

(h) *Ex parte communications with decision-making officials.* Pursuant to section 214(a)(1)(B) of the Homeland Security Act of 2002, Protected CII is not subject to ''any agency rules or judicial doctrine regarding ex parte communications with a decision-making official.''

(i) *Restriction on use of Critical Infrastructure Information in civil actions.* Protected CII shall not, without the written consent of the person or entity submitting such information, be used by any Federal, State, or local authority, or by any third party, in any civil action arising under Federal or State law if such information is submitted in good faith for homeland security purposes.

(j) *Disclosure to foreign governments.* The CII Program Manager, or the Program Manager's designee, may provide Protected CII to a Foreign Government without the written consent of the person or entity submitting such information to the same extent it may provide advisories, alerts, and warnings to other governmental entities as described in § 29.8(e) of this chapter, or in furtherance of an investigation or the prosecution of a criminal act.

(k) *Obtaining written consent for further disclosure from the person or entity submitting information.* Only the CII Program Manager, or the Program Manager's designee, may seek and obtain written consent from persons or entities submitting information when such consent is required under the CII Act of 2002 to permit disclosure. A person or entity's consent to additional disclosure, if conditioned both on a limited release of Protected CII for DHS's purposes and in a manner that offers reasonable protection against disclosure to the general public, shall not result in the information's loss of treatment as Protected CII.

§ 29.9 Investigation and reporting of violation of CII procedures.

(a) All persons authorized to have access to Protected CII shall report any possible violations of security procedures, the loss or misplacement of Protected CII, and any unauthorized disclosure of Protected CII immediately to the CII Program Manager, who shall in turn report the incident to the IAIP Directorate Security Officer and to the DHS Inspector General.

(b) *Review and investigation of written report.* The Inspector General, CII Program Manager, or IAIP Security Officer, shall investigate the incident and, in consultation with the Office of the General Counsel, determine whether a violation of procedures, loss of information, and/or unauthorized disclosure has occurred. If the investigation reveals any evidence of wrongdoing, DHS, through the Office of the General Counsel, shall immediately contact the Department of Justice, Criminal Division, for consideration of prosecution under the criminal penalty provisions of section 214(f) of the CII Act of 2002.

(c) *Notification to originator of Protected CII.* If the CII Program Manager or the IAIP Security Officer determines that an unauthorized disclosure occurred, or that Protected CII is missing, the CII Program Manager shall notify the submitter of the information in writing. The written notice shall contain a description of the incident and the date of disclosure, if known.

(d) *Criminal and administrative penalties:* Pursuant to section 214(f) of the Homeland Security Act of 2002, whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any CII protected from disclosure by the Homeland Security Act and coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under Title 18 of the United States Code, imprisoned not more than one (1) year, or both, and shall be removed from office or employment.

Dated: April 9, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–9126 Filed 4–14–03; 8:45 am]

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