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Presidential Documents

Title 3—

The President

Presidential Determination No. 2001–04 of December 11, 2000

Determination to Authorize the Furnishing of Emergency Military Assistance to the United Nations Mission in Sierra Leone (UNAMSIL), Countries Participating in UNAMSIL, and Other Countries Involved in Peacekeeping Efforts or Affiliated Coalition Operations With Respect to Sierra Leone

Memorandum for the Secretary of State [and] the Secretary of Defense

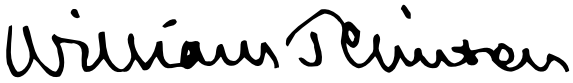
Pursuant to the authority vested in me by section 506(a) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318 (a) (1) (A) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military assistance to UNAMSIL, countries currently or in the future participating in UNAMSIL, and other countries involved in peacekeeping efforts or affiliated coalition operations with respect to Sierra Leone, including the Government of Sierra Leone, and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a) (1) of the Act.

I therefore direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value not to exceed $36 million to UNAMSIL and such countries to support peacekeeping efforts with respect to Sierra Leone.

The Secretary of State is authorized and directed to report this Determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 11, 2000

[FR Doc. 00–32282
Filed 12–15–00; 8:45 am]
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–115–1]

Specifically Approved States Authorized To Receive Mares and Stallions Imported from Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Oregon to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Oregon has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on February 16, 2001, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 17, 2001.

ADDRESSES: Please send four copies (an original and three copies) of your comments or notice of intent to submit adverse comments to: Docket No. 00–115–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–115–1.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Karen James, Assistant Director, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat mares and stallions over 731 days of age from a region where CEM exists in accordance with § 93.301(e).

Oregon has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all of the requirements in § 93.301(e) for importing mares and stallions over 731 days old from regions where CEM exists. Therefore, this direct final rule will add Oregon to the lists of States in § 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comments. This rule will be effective, as published in this document, February 16, 2001 unless we receive written adverse comments or written notice of intent to submit adverse comments by January 17, 2001.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice in the **Federal Register** before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

Horse Imports From CEM-Affected Regions

The share of purebred breeding horse imports coming from CEM-affected regions is a relatively small fraction of the total number of horses imported, ranging between 5 and 10 percent between 1996 and 1999 (table 1). However, horses supplied by CEM-affected countries are generally highly valued. In 1999, for example, the average value of a purebred breeding horse imported from a CEM-affected region was $52,300, whereas the average value of a purebred breeding horse imported from anywhere in the world (i.e., from both CEM-affected and CEM-free regions) was $11,700.

During these same 4 years, the United States imported 28,374 horses classified as ''except purebred breeding'' from CEM-affected regions (table 2). While it is possible that some of these horses from CEM-affected regions may be for breeding, it is more likely that they are imported for racing or exhibition.[1] During 1996–1999, about one of every five ''except purebred breeding'' horses imported into the United States came from CEM-affected countries. Their combined annual value comprised, on average, 60 percent of the value of all ''except purebred breeding'' horse imports.

TABLE 1.—QUANTITY AND VALUE OF PUREBRED BREEDING HORSES IMPORTED FROM CEM-AFFECTED REGIONS, 1996–1999

Quantity			Value	
Year	Number	Percent of all purebred breeding imports	Dollars (in millions)	Percent of all purebred breeding imports
1996	69	5.2	$2.0	26.7
1997	115	7.2	2.7	19.9
1998	200	10.0	31.3	77.8
1999	187	8.1	9.8	36.2

Source: U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), ''Global Agricultural Trade System,'' using data from the United Nations Statistical Office. Harmonized tariff schedule 010111.

TABLE 2.—QUANTITY AND VALUE OF HORSES ''EXCEPT PUREBRED BREEDING'' IMPORTED FROM CEM-AFFECTED REGIONS, 1996–1999

Quantity			Value	
Year	Number	Percent of all ''except purebred breeding'' imports	Dollars (in millions)	Percent of all ''except purebred breeding'' imports
1996	2,642	8.7	$93.5	26.7
1997	3,677	15.5	99.9	76.7
1998	17,044	40.7	147.9	83.6
1999	5,011	17.9	170.9	54.8

Source: USDA, FAS, ''Global Agricultural Trade System,'' using data from the United Nations Statistical Office. Harmonized tariff schedule 010119.

CEM Testing

To minimize the risk of the CEM organism entering the United States, restrictions are applied to stallions and mares imported from CEM-affected regions, including health certification and preembarkation and postentry testing and treatment. During 1996 through 1999, 21,882 cultures were tested at approved laboratories for CEM and a similar CEM-like organism. Forty of the cultures tested positive, of which at least one-third to one-half were infections by the CEM-like organism (several of domestic origin). Thus, the likelihood of a specimen testing CEM-positive during this period was roughly about 0.1 percent.

As this small percentage indicates, breeding horses imported from CEM-affected regions rarely test positive for CEM. When they do, they are treated and remain in isolation until examined and subsequent cultures test negative. Nevertheless, the potential consequences of the establishment of CEM in the United States make the risk posed by this disease a serious concern. Besides the health costs associated with infected horses, establishment of CEM would have a disruptive impact on U.S. horse exports, especially on high-value breeding horses. At a minimum, more extensive testing and extended quarantining would be required of exporters. The addition of Oregon to the list of approved States is explicit recognition of the capability of Oregon facilities to carry out postentry testing and treatment requirements.

Affected Entities

Importers of breeding horses in Oregon—owners of horse farms and race

[1] As stated in the Harmonized Tariff Schedule of the United States (2000), ''The expression 'purebred breeding animals' covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes.''

horses—are the entities most likely to be affected by this rule. This rule will enable importers in Oregon to import stallions and mares directly from CEM-affected regions, whereas at present, those animals must first be imported into another approved State, the closest of which is California, and undergo postentry testing and treatment before being transported to Oregon.

The Regulatory Flexibility Act requires that agencies consider the impacts of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of $500,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in raising horses and other equines (NAICS code 112920). For operations owning race horses (NAICS code 711219), the small entity criterion is annual gross receipts of $5 million or less.

Most horse owners in Oregon will be unaffected by this rule, since they do not purchase horses imported from CEM-affected countries. Of those firms that will be affected, it is reasonable to assume that at least some may be small entities. According to the 1997 Census of Agriculture, a total of 13,952 horses were sold by 2,579 farms in Oregon in 1997, implying an average income per farm from horse sales of $5,410. However, given the generally higher value of breeding horses from CEM-affected countries, larger operations will be the more likely affected entities.

The impact for affected Oregon establishments will be positive in terms of postentry transport cost savings; the horses will be able to be imported directly into Oregon rather than through California or other approved States. However, the savings is not expected to be large when compared to the value of the imported horses, and a substantial number of small entities are not expected to be significantly affected.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by adding, in alphabetical order, ''The State of Oregon''.

b. In paragraph (h)(7), by adding, in alphabetical order, ''The State of Oregon''.

Done in Washington, DC, this 11th day of December 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–31981 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

Removal of Asset and Liability Backup Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: On June 9, 1999, the FDIC published an interim final rule (64 FR 30869) requiring asset and liability backup programs (ALBPs) for limited deposit account and loan account information in a small number of institutions. The rule was intended to facilitate timely restoration of key financial records in the event that an FDIC-insured depository institution experienced a Year 2000 (Y2K) computer problem that required it to be placed in receivership. Because this rule was created to meet a contingency related to Y2K, the FDIC did not contemplate that it would remain effective after the contingency period ended. A sunset provision was therefore included in the rule to the effect that its procedures would not be required after June 30, 2000. This action confirms that the rule is no longer needed, and removes it from the Code of Federal Regulations.

EFFECTIVE DATE: December 18, 2000.

FOR FURTHER INFORMATION CONTACT: James Crum, Project Manager, Bank Technology Group, (202) 736–0586; or Nancy Schucker Recchia, Counsel, Legal Division (202) 898–8885, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) provided extensive Y2K-readiness guidance to the banking industry. Despite best efforts in preparing for Y2K, there remained the possibility that some institutions would not be Y2K ready and might have to be closed. The FDIC planned for a broad range of contingencies and on June 9, 1999, published an interim final rule to ensure that, if an affected institution experienced a Y2K problem and was closed, the FDIC would be able to make federally insured deposits available to depositors expeditiously. The rule also facilitated the quick acquisition or transfer of servicing of assets to help maintain public confidence in, and minimize any related disruption to, the financial system.

The interim final rule, 12 CFR 331, became effective on July 9, 1999, including the provision at 12 CFR 331.6 that the ALBP procedures contained in the rule would not be needed after June 30, 2000. As anticipated, the procedures are no longer needed. Therefore, with this action, the FDIC is rescinding the rule.

For the reasons set out in the preamble and under the authority of 12 U.S.C. 1818 (a) and (b) and 12 U.S.C. 1819(a) (Seventh and Tenth), 12 CFR Part 331 is removed and reserved.

Dated at Washington, D.C., this 13th day of December, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–32173 Filed 12–15–00; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 509, and 560

[No. 2000–102]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications to reflect existing practices and to provide consistency among the Federal banking agencies, updated statutory and other references, and a correction of a typographical error.

EFFECTIVE DATE: December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Senior Paralegal (Regulations), (202) 906–7135, or Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. These changes are outlined below:

Part 506—Information Collection Requirements under the Paperwork Reduction Act

OTS is updating its table displaying the OMB control numbers assigned to various OTS regulations under the Paperwork Reduction Act. *See* 12 CFR 506.1(b). OTS is revising the table to add and correct the references to the control numbers.

Part 509—Rules of Practice and Procedure in Adjudicatory Proceedings

OTS is making two technical amendments to the Uniform Rules of Practice and Procedure. First, OTS is amending § 509.19(c) to conform its default provisions to the rules of the other banking agencies. Under the current OTS rule, if a respondent fails to file a timely answer to a notice of charges in an administrative proceeding, the Administrative Law Judge (ALJ), upon motion of Enforcement Counsel, ''shall . . . file a recommended decision with the Director containing the findings and the relief sought in the complaint.'' The other banking agencies' rules are similar, but require the ALJ to make the additional determination that ''no good cause exists for a respondent's failure to file a timely answer.'' [1]The ALJs in OTS administrative proceedings have generally given the respondents an opportunity to explain a failure to respond through this good cause process. OTS believes that this technical amendment is necessary to update the rule to reflect existing practices, to provide greater consistency with the other federal banking agencies, and to be more explicit in the requirements of the administrative law judge before recommending a decision based on a default.

OTS is also correcting a typographical error in § 509.31, which governs scheduling and prehearing conferences. The rule currently refers to the ALJ's authority to direct counsel to the parties to meet to address ''matters of which *office* notice may be taken (emphasis added).'' This reference is replaced with term ''official notice.''

Part 560—Lending and Investment

Finally, OTS is revising the lending and investment powers chart at § 560.30 to provide corrected statutory citations. The Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law No. 104–208, removed section 5(c)(3)(A) of the Home Owners' Loan Act and redesignated sections 5(c)(3)(B) through (D) as 5(c)(3)(A) through (C). OTS has made corresponding changes to the powers chart.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[2] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it corrects and clarifies provisions that have caused confusion. Because the amendments in the rule are not substantive, making them effective immediately will not detrimentally affect savings associations.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[3] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[4] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 509

Administrative practice and procedure, Penalties.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended in paragraph (b) by removing the entry for § 563.134 and adding three new entries in numerical order to read as follows:

[1] *See e.g.,* 12 CFR 19.19(c)(OCC).

[2] 5 U.S.C. 553.

[3] Pub. L. No. 103–325, 12 U.S.C. 4802.

[4] Pub. L. No. 96–354, 5 U.S.C. 601.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
536.40	1550–0106
* * * * * * *	
563.143 through 563.146	1550–0059
* * * * * * *	
Part 573	1550–0103
* * * * * * *	

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

3. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

4. Section 509.19 is amended by revising the second sentence of paragraph (c)(1) and by adding a new sentence following it to read as follows:

§ 509.19 Answer.

* * * * *

(c) *Default*—(1) *Effect of failure to answer.* * * * If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Director a recommended decision containing the findings and the relief sought in the notice. * * *

* * * * *

5. Section 509.31(b)(3) is revised to read as follows:

§ 509.31 Scheduling and prehearing conferences.

* * * * *

(b) *Prehearing conferences.* * * *

(3) Matters of which official notice may be taken;

* * * * *

PART 560—LENDING AND INVESTMENT

6. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

7. Section 560.30 is amended by revising the following three entries in the Lending and Investment Powers Chart and Note 3 following the chart to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

* * * * *

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
* * * * * * *		
Community development loans and equity investments.	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets.[3]
Construction loans without security	5(c)(3)(C)	In the aggregate, the greater of total capital or 5% of total assets.
* * * * * * *		
Nonconforming loans	5(c)(3)(B)	5% of total assets.
* * * * * * *		

Notes:

* * * * *

[3] The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(A) (formerly 5(c)(3)(B)), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at www.ots.treas.gov).

* * * * *

By the Office of Thrift Supervision.
Dated: December 8, 2000.

Ellen Seidman,

Director.

[FR Doc. 00–31871 Filed 12–15–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–69–AD; Amendment 39–12035; AD 2000–25–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–26–05, which currently requires you to repetitively inspect the main landing gear (MLG) inboard door hinges and attachment angles for cracks on certain The New Piper Aircraft, Inc. (Piper) PA–31 series airplanes. AD 80–26–05 also requires you to replace any cracked MLG inboard door hinge or attachment angle with parts of improved design. This AD results from the Federal Aviation Administration's policy on aging commuter-class aircraft and the determination that an improved design MLG inboard door hinge and attachment assembly, when incorporated, will eliminate the need for the currently required repetitive short-interval inspections; however, we have received reports of cracks in the improved design MLG inboard door hinge assemblies on the affected airplanes. This AD retains the current repetitive inspections contained in AD 80–26–05, and requires inspections on the improved design parts. The actions specified by this AD are intended to detect and correct cracked MLG inboard door hinge assemblies. These cracked door hinge assemblies could result in the MLG becoming jammed, with consequent loss of control of the airplane during landing operations.

DATES: This AD becomes effective on January 19, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 19, 2001.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–69–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What prior AD action did FAA take on this subject? In 1980, FAA issued AD 80–26–05, Amendment 39–3994, in order to detect and correct cracked main landing gear (MLG) inboard door hinge assemblies on certain Piper PA–31 series airplanes. AD 80–26–05 currently requires you to repetitively inspect the MLG inboard door hinges and attachment angles for cracks; and requires you to replace any cracked MLG inboard door hinge or attachment angle.

On December 1, 1995, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–31 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774), and proposed to supersede AD 80–26–05, Amendment 39–3994. The NPRM proposed to:

—Retain the requirement of repetitively inspecting the MLG inboard door hinge assemblies for cracks, and replacing any cracked MLG inboard door hinge assembly; and

—Require incorporating a MLG inboard door hinge assembly of improved design (part number (P/N) 47529–32) or FAA-approved equivalent part number, as terminating action for the repetitive inspection requirement.

Accomplishment of the proposed inspections would have been required in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

This NPRM was consistent with FAA's aging commuter-class aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on FAA's determination that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to installing the improved design hinge assemblies on the affected airplanes would be to rely on the repetitive inspections required by AD 80–26–05 to detect cracks in these areas.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of this amendment. Due consideration was given to the one comment received.

What issue did this comment address? The comment received on the NPRM contained information that the improved design MLG inboard door hinge assemblies, P/N 47529–32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80–26–05. The commenter stated that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529–32 hinge assemblies.

What action did FAA take? We conducted a review of the manufacturer's service history and service difficulty reports in FAA's database associated with the P/N 47529–32 MLG inboard door hinge assembly. Based on a review of this information, including the information received from the commenter, we determined that more information and analysis were needed before mandating MLG inboard door hinge assembly replacements through an AD.

We then issued an advance notice of proposed rulemaking (ANPRM) on February 11, 1997. The ANPRM was published in the **Federal Register** on February 19, 1997 (62 FR 7375). The purpose of the ANPRM was to encourage interested persons to provide information that describes what they consider the best action (if any) for FAA to take regarding the P/N 47529–32 MLG inboard door hinge assembly issue. The FAA also withdrew the NPRM. We received no information or comments regarding the ANPRM.

We then re-evaluated the information in our service difficulty database. The database, at that time, contained 10 reports of failure or cracks found in the MLG inboard door hinge assembly on the affected airplanes. The commenter to the original NPRM had submitted six

of these reports. Three of these six incident reports were specifically attributed to the original MLG inboard door hinge assemblies and three to the improved design MLG inboard door hinge assemblies. The four reports that others submitted do not specifically identify whether the original MLG inboard door hinge assemblies were installed or the improved design assemblies were installed. Since the incidents occurred on high service time airplanes and since there is no AD action mandating the installation of the improved-design MLG inboard door hinge assemblies, we presumed that the original hinge assemblies were installed.

The FAA then reviewed the three incident reports on the improved design MLG inboard door hinge assemblies and, along with the National Transportation Safety Board (NTSB), performed extensive testing and analysis of the improved design MLG inboard door hinge assemblies. Based on this review, testing, and analysis, we determined that:

—The incidents were isolated and that mandating repetitive inspections was not needed when the P/N 47529–32 MLG inboard door hinge assemblies are installed; and

—AD action should be taken to eliminate the repetitive short-interval inspections that AD 80–26–05 requires and to prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge assembly.

On October 14, 1997, FAA issued an NPRM to address these issues. The NPRM was published in the **Federal Register** on October 21, 1997 (62 FR 54595).

What has happened to justify this AD action? Since issuance of the NPRM, we have received additional reports of cracks in the MLG inboard door hinge assemblies. The reports reference incidents on both the original design assemblies and the improved design hinges. As of the issue date of this document, we have reports of the following:

—27 reports of cracked improved design MLG inboard door hinge assemblies; and

—41 reports of cracked original design MLG inboard door hinge assemblies.

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–31 series airplanes. This proposal was published in the **Federal Register** as a supplemental NPRM on July 21, 2000 (65 FR 45323). The supplemental NPRM proposed to supersede AD 80–26–05, Amendment 39–3994, with a new AD that proposed to require:

—Repetitively inspecting the MLG inboard door hinge assemblies (regardless of part number); and

—Immediately replacing any cracked MLG inboard door hinge assembly with a new MLG inboard door hinge assembly, Piper part number (P/N) 47529–32 (or FAA-approved equivalent part number).

What is the potential impact if FAA took no action? These actions are necessary to detect and correct cracked MLG inboard door hinge assemblies. These cracked door hinge assemblies could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

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

Comment Issue No. 1: Piper Part Number (P/N) 47529–32 MLG Door Hinge Assemblies Are Not Made of Steel

What is the commenter's concern? The commenter states that the NPRM incorrectly identifies the Piper P/N 47529–32 MLG door hinge assemblies as parts made of steel. The commenter explains that these assemblies are made of aluminum.

What is FAA's response to the concern? We concur that the Piper P/N 47529–32 MLG door hinge assemblies are made of aluminum. We inadvertently referenced these parts as steel parts in the supplemental NPRM.

We are changing the final rule AD accordingly.

Comment Issue No. 2: All MLG Door Hinge Assemblies Should Be Inspected at 100-Hour TIS Intervals

What is the commenter's concern? The commenter expresses doubt that the Piper P/N 47529–32 MLG door hinge assemblies can go as long as 2,000-hour TIS intervals between inspections before cracking. The commenter recommends 100-hour TIS interval inspections for these assemblies.

What is FAA's response to the concern? We determined that the 2,000-hour TIS interval was an adequate compliance time for these parts based on our conservative estimate of all quantitative information available. The service reports indicate failures on airplanes ranging from a low of 3,615 total hours TIS to a high of 14,852 total hours TIS.

We are not changing the final rule AD as a result of this comment.

Comment Issue No. 3: FAA Underestimated the Cost Impact

What is the commenter's concern? The commenter states that the cost impact presented in the supplemental NPRM is incorrect because:

—Removal of the hinges provides the most practical method of fluorescent dye-penetrant inspections and this would raise the inspections costs from $120 to $500; and

—The cost of Piper P/N 47–528–32 MLG door hinge assemblies is approximately $465 instead of $270 as specified in the supplemental NPRM.

What is FAA's response to the concern? We do not concur with changing the cost to accomplish the inspection. While removing the hinges from the airplane to accomplish the inspection is an option, FAA has determined that you can adequately accomplish the inspections without removing the hinges.

After checking with the manufacturer, we concur that the cost for the replacement MLG door hinge assemblies is approximately $465.

We are changing the Cost Impact section of this document accordingly.

Comment Issue No. 4: AD Should Not Apply to MLG Door Hinge Assemblies That Are Made of Steel

What is the commenter's concern? The commenter states that the AD should follow Piper Service Bulletin No. 682 and not require inspections on airplanes that have MLG door hinge assemblies that are made of steel. The commenter also requests that FAA include a list of the two outside sources that currently provide assemblies made of steel.

What is FAA's response to the concern? We concur that the AD should not apply to MLG door hinge assemblies that are made of steel and we are changing the final rule accordingly.

However, FAA is not including the list of those outside sources that currently provide assemblies made of steel. If we did include this list, out of fairness, we would feel obligated to revise the AD anytime an outside source developed and received approval for installation of MLG door hinge assemblies made of steel on the affected airplanes.

A list of outside vendors with FAA-approved assemblies made of steel is always available from the FAA address included in the AD.

The FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and editorial corrections. These changes and corrections provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition and do not impose any additional burden than what was intended in the supplemental NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 2,344 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
2 workhours × $60 per hour = $120	No parts required for the inspection	$120 per airplane	$281,280

We estimate the following costs to accomplish the replacement, if necessary:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	$465 per airplane	$585 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 80–26–05, Amendment 39–3994, and by adding a new AD to read as follows:

2000–25–01 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–12035; Docket No. 96–CE–69–AD; Supersedes AD 80–26–05, Amendment 39–3994.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with Piper part number 46653–00 or 47529–32 main landing gear door hinge assemblies made of aluminum (or FAA-approved equivalent part numbers).

Models	Serial Nos.
PA–31	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–300	31–2 through 31–900 and 31–7300901 through 31–8312019.
PA–31–350	31–5001 through 31–5004 and 31–7305005 through 31–8553002.
PA–31–325	31–7400990, 31–7512001 through 31–8312019.
PA–31P	31P–1 through 31P–109 and 31P–7300110 through 31P–7730012.
PA–31T	31T–7400002 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–8104073; 31T–8104101; 31T–8304001 through 31T–8304003; and 31T–1104004 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–8475001, and 31T–5575001.
PA–31P–350	31P–8414001 through 31P–8414050.

Note 1: Aircraft referred to as Model PA–31–310 are actually Model PA–31 airplanes. Actions specified for PA–31 airplanes must also be performed. See also AD 80–26–05, Piper Service Bulletin No. 682, dated July 24, 1980, and type certificate data sheet A20SO.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked main landing gear (MLG) inboard door hinge assemblies. This could result in the MLG becoming jammed with consequent loss of control of the airplane during landing operations.

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

Action	Compliance time	Procedures
(1) For airplanes with any MLG inboard door hinge assembly that is Piper part number 47529–32 (or FAA-approved equivalent part number), accomplish the following: (i) Inspect all hinges and hinge attachment angles in the MLG inboard door hinge assembly; and (ii) Replace any cracked MLG inboard door hinge assembly with a Piper part number 47529–32 assembly (or FAA-approved equivalent part number)	Inspect upon accumulating 2,000 hours time-in-service (TIS) on the MLG inboard door hinge assembly or within the next 100 hours TIS after January 19, 2001 (the effective date of this AD), whichever occurs later; and thereafter at intervals not to exceed 2,000 hours TIS. Accomplish the replacement, if necessary, prior to further flight after the inspection	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980
(2) For airplanes with any aluminum MLG inboard door hinge assembly that is not Piper part number 47529–32 (or FAA-approved equivalent part number) or any assembly that is not made of steel, accomplish the following: (i) Inspect all hinges and hinge attachment angles in the MLG inboard door hinge assembly; and. (ii) Replace any cracked MLG inboard door hinge assembly with a Piper part number 47529–32 assembly (or FAA-approved equivalent part number)	Inspect at the next inspection required by AD 80–26–05 or within the next 100 hours time-in-service (TIS) after January 19, 2001 (the effective date of this AD), whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacement, if necessary, prior to further flight after the inspection where the cracked assembly was found	Accomplish in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

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

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

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

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

(2) Alternative methods of compliance approved in accordance with AD 80–26–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov.*

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Service Bulletin No. 682, dated July 24, 1980. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 80–26–05, Amendment 39–3994.

(j) *When does this amendment become effective?* This amendment becomes effective on January 19, 2001.

Issued in Kansas City, Missouri, on November 30, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31451 Filed 12–15–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–121–AD; Amendment 39–12036; AD 2000–25–02]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–05–04, which currently requires you to repetitively inspect the front and rear wood spars for damage (including installing any as-needed inspection holes) and repair or replace any damaged wood spar on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes. Damage is defined as cracks, compression cracks, longitudinal cracks through the bolt holes or nail holes, or loose or missing nails. This AD retains the actions of AD 98–05–04 for the ACAC Model 8GCBC airplanes; extends the actions to all ACAC 7, 8, and 11 series airplanes (except the inspections are not repetitive for certain 7 and 11 series airplanes); incorporates

alternative methods of accomplishing the actions; and requires reporting any damage found. This AD is the result of a review of the service history of the affected airplanes that incorporate wood wing spars where damage was found in this area and consideration of all public comments received. The actions specified by this AD are intended to detect and repair or replace damaged wood wing spars. Continued operation with such damage could progress to in-flight structural failure of the wing with consequent loss of control of the airplane.

DATES: This amendment becomes effective on January 19, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 19, 2001.

ADDRESSES: You may get service information referenced in this AD from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: *www.amerchampionaircraft.com.* You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

What prior AD action did FAA take on this subject? A review of the service history of ACAC 7, 8, and 11 series airplanes that incorporate wood wing spars caused FAA to initiate AD rulemaking action. In-flight wing structural failures on ACAC Model 8GCBC airplanes and several incidents and accidents on other affected airplane models where damage was found on the front and rear wood spars prompted this review. Those rulemaking actions are:

—AD 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), which applies to ACAC Model 8GCBC airplanes, and requires you to accomplish the following: (1) inspect (repetitively) the front and rear wood spars for damage (including installing any necessary inspection holes); and (2) repair or replace any damaged wood spar; and

—a notice of proposed rulemaking (NPRM) (Docket No. 97–CE–79–AD) that, if followed by a final rule, would have required the same actions as AD 98–05–04 on all ACAC 7, 8, and 11 series airplanes (excluding the Model 8GCBC airplanes). This NPRM was published in the **Federal Register** on November 3, 1997 (62 FR 59310).

What is the potential impact if FAA took no action? Continued operation with such cracks and damage could progress to in-flight structural failure of the wing with consequent loss of the airplane.

Did we receive comments on the NPRM (Docket No. 97–CE–79–AD)? The FAA encouraged interested persons to participate in the rulemaking aspects of this subject. We received numerous comments on the NPRM (Docket No. 97–CE–79–AD). Many of these comments proposed that we combine the actions of the NPRM and AD 98–05–04 into one AD that would affect all ACAC 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. Based on these comments, FAA:

—Withdrew the NPRM Docket No. 97–CE–79–AD (64 FR 29969, June 4, 1999); and

—Issued an NPRM that proposed to supersede AD 98–05–04 with a new AD that would combine the actions of AD 98–05–04 and Docket No. 97–CE–79–AD; and incorporate recommended alternative methods for complying with those actions. This NPRM was published in the **Federal Register** on June 4, 1999 (64 FR 29972).

Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998.

Was the public invited to comment on the NPRM? The FAA encouraged interested persons to participate in the making of this amendment. At the request of several commenters, FAA reopened the comment period for the NPRM on July 29, 1999. This action was published in the **Federal Register** on August 4, 1999 (64 FR 42297). A summary of the comments on both the original NPRM and the reopening of the comment period follow, along with FAA's responses.

Comment Issue No. 1: Extend the Comment Period to 60 Days

What is the commenters' concern? Several commenters request an extension to the comment period in order to have more time to provide information on the proposed rule.

What is FAA's response to the concern? As discussed previously, FAA reopened the comment period to give the public an additional 30 days to respond.

We are not changing the final rule as a result of these comments.

Comment Issue No. 2: Only Require a One-Time Inspection for Certain 7 and 11 Series Airplanes

What is the commenters' concern? Numerous commenters agree with the AD pertaining to ACAC airplane models. However, the commenters state that certain lightweight 7 and 11 series airplanes with low horsepower engines should only be subject to a one-time spar inspection because they are not certificated for aerobatic flight and are not subjected to the same operations as the heavier high horsepower airplanes.

What is FAA's response to the concern? The FAA has determined that wing damage incidents are the major cause of compression cracks and other spar damage in low horsepower and lightweight airplanes. Therefore, a one-time inspection is acceptable for ACAC Models 7AC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16BA), S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC airplanes. These airplanes have engines that are 90 horsepower and lower (includes 60- to 90-horsepower engines). You must repetitively inspect airplanes that are modified with engines greater than 90 horsepower.

You must also accomplish the inspection any time one of the affected airplanes is involved in any accident or incident where the wing is involved.

We are changing the final rule AD to only require an initial inspection on certain ACAC 7 and 11 series airplanes, with any subsequent inspections required for any affected airplane involved in an incident/accident (that happens after the effective date of this AD) where wing damage occurs (*e.g.,* surface deformations such as abrasions, gouges, scratches, or dents, etc.).

Comment Issue No. 3: Exclude Certain Airplanes From the Proposed AD

What is the commenters' concern? Numerous commenters request that FAA remove lightweight and low horsepower airplanes from the Applicability of the AD. The commenters state that these airplanes are not certificated for aerobatic operation and, therefore, do not receive the stress levels in the spar that caused the need for this AD.

What is FAA's response to the concern? We do not concur that these lightweight and low horsepower airplanes should be removed from the AD. We have received compression crack and spar damage reports on lightweight and low horsepower airplane models (*i.e.,* Model 7AC). The following is a synopsis from a service difficulty report (SDR) for a Model 7AC airplane:

During annual inspection, found rear spar right wing cracked across width of spar outboard rear strut attach point next to doubler. Defect was found using an inspection mirror and strong light through an inspection hole. The removal of fabric material on the bottom of the wing in the area of suspicion verified the defect. Submitter suggests immediate inspection of all Aeronca Champ 7AC aircraft both on the top and bottom of the aft wing strut spar attach points outboard.

This information caused us to propose (in the NPRM) a requirement for submitting all findings of airplane wing damage. You can accomplish this by describing the damage in a Malfunction or Defect Report (M or D), FAA Form 8010–4, and sending a copy of the report to the Chicago Aircraft Certification Office. (You may submit M or D reports electronically through the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600.* Because you will lose access to the report once you electronically submit it, we recommend that you print two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records). We will evaluate the data as it is received and initiate further rulemaking action, if necessary.

We are not changing the AD based on these comments. However, as discussed in the previous comment, the AD will only require an initial inspection on the airplanes equipped with low horsepower engines. Subsequent inspections are required for any affected airplane involved in an incident/accident (that happens after the effective date of this AD) where wing damage occurs (*e.g.,* surface deformations such as abrasions, gouges, scratches, or dents, etc.).

Comment Issue No. 4: The AD Should Only Apply to Aerobatic Aircraft

What is the commenters' concern? Two commenters state that spar damage is a direct result of aerobatic flight. The commenters suggest that FAA change the proposal to affect only aircraft certificated for aerobatic activity.

What is FAA's response to the concern? We do not concur. Reports indicate that spar damage occurs on low horsepower airplane models that are not certificated for aerobatic flight. We have determined that wing damage incidents are the primary cause of compression cracks on the lower horsepower airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 5: Exclude Airplanes With Damaged Spars That Can Still Support the Required Load

What is the commenter's concern? One commenter requests that FAA exclude airplanes from the Applicability of the AD if any wing with a compression crack can still pass testing to 150-percent of design limit load.

What is FAA's response to the concern? We do not concur. Compression cracked test spar specimens may not represent wood spars where compression cracks occur randomly along the spar length. The only assurance that the specimen was in a ''Pass'' condition was if the specimen's compression crack was identical to that of a failed spar. All compression cracks are not identical. Even slight compression cracks may seriously reduce the strength of the material. The approved type design of the affected airplanes does not allow cracked spars.

We are not changing the AD based on these comments.

Comment Issue No. 6: Properly Performed Annual Inspections are Sufficient

What is the commenters' concern? Several commenters state that, if you accomplish a proper annual inspection, then there is no need for this AD. These commenters state that the required maintenance programs provide the procedures to detect spar damage. These commenters also state that part 43 of the Federal Aviation Regulations (14 CFR part 43) requires inspection of the wing spars.

What is FAA's response to the concerns? We concur that maintenance manuals for the ACAC 7, 8, and 11 series airplanes and part 43 of the Federal Aviation Regulations (14 CFR part 43) specify inspecting the wing spars for cracks during annual and 100-hour inspections, particularly at the butt ends and strut attach points. However, this existing guidance does not provide instructions for sufficiently accessing the spar or identifying damage. For example, compression cracks appear as barely visible, minute, and jagged series of lines that run across the grain on the top or bottom of the spar. If not viewed with detailed instructions and the proper equipment, you could overlook them. SDR's submitted since the issuance of AD 98–05–04 have confirmed the importance of inspecting the wing spars in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. We can only require compliance with service information through AD action.

We are not changing the AD based on these comments.

Comment Issue No. 7: Exempt Airplanes With Wings That Were Recently Rebuilt

What is the commenters' concern? Two commenters request that FAA exempt from the AD airplanes where the wing spars were recently inspected and found to be free of damage or where the spars were replaced.

What is FAA's response to the concern? We do not concur. To adequately inspect the wing spars for cracks and compression cracks, you must utilize the detailed inspection procedures in ACAC Service Letter 406, Revision A, dated May 6, 1998 (or procedures approved by FAA). Information available to FAA reveals that mechanics have overlooked compression cracks when not following these procedures.

We are not changing the AD based on these comments

Comment Issue No. 8: Eliminate, Minimize, or Provide Alternatives to Installing Top Inspection Covers

What is the commenters' concerns? Several commenters request that FAA remove from this AD the option of installing inspection covers on the top surface of the wings of the ACAC 7, 8, and 11 series airplanes. Specific concerns are as follows:

1. Top wing inspection covers could leak, cause water damage to the spar, and result in structural degradation of the wing;
2. Top wing inspection covers could come off during flight due to the negative pressure on the top surface, and result in wing damage; and
3. Top wing inspection covers will cause aerodynamic and performance concerns.

What is FAA's response to the concerns? We do not concur with removing the option of installing top inspection covers from the AD. ACAC Service Letter 406, Revision A, dated May 6, 1998, allows the mechanic to utilize a variety of procedures and techniques (including the installation of top inspection covers) to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type, or

location of inspection holes/covers. The service information only specifies the installation of additional FAA-approved holes/covers as needed to accomplish a thorough spar inspection. The mechanic performing the inspection is in the best position to determine the minimum number, type, and location of inspection holes/covers needed to accomplish a thorough spar inspection. We also do not concur that the installation of these covers will cause other safety concerns. Our response to each specific concern is as follows:

1. Water damage to the spar: The manufacturer designed and tested an FAA-approved watertight seal for the as-needed wing inspection cover installation. This minimizes the potential for water damage.

2. Wing damage: The manufacturer designed the covers specifically to not cause damage to the reinforced cutout if the eight screws that attach the covers are inadvertently left off or not tightened, and the covers come off the airplane. Testing indicates that the covers easily flip backward off the wing if all screws are omitted.

3. Aerodynamic and performance concerns: FAA flight test personnel have evaluated these as-needed top inspection covers. As of the issuance of this document, we have not received any reports of decreased performance or service difficulty reports concerning any of the over 200 sets (400 inspection covers) that have already been delivered to the field.

We are not changing the AD based on these comments.

Comment Issue No. 9: Require the Installation of Top Inspection Covers

What is the commenter's concerns? One commenter requests that we not require the mechanics to inspect with a high intensity light source and mirrors. The commenter states that compression cracks are extremely difficult to detect and are easily overlooked.

The commenter also states that the initial inspection method described in ACAC Service Letter 406, Revision A, dated May 6, 1998, is inadequate and the best way to detect compression cracks is by removing a section of the leading edge and looking directly at the top of the spar. This commenter suggests requiring the installation of FAA-approved inspection holes/covers that are better situated on top of the wing than the holes/covers referenced in ACAC Service Letter 417, Revision C, dated May 6, 1998.

What is FAA's response to the concern? ACAC Service Letter 406, Revision A, dated May 6, 1998, allows the mechanic to utilize a variety of procedures and techniques to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type and/or location of inspection holes/covers. The service information only specifies the installation of additional FAA-approved holes/covers as needed to accomplish a thorough spar inspection. The mechanic performing the inspection is in the best position to determine the type, number, and location of inspection holes/covers needed to accomplish a thorough spar inspection.

Mechanics utilizing ACAC Service Letter 406, Revision A, dated May 6, 1998, have detected compression cracks on the wing spars that were not detected during previous annual inspections. We have determined that the procedures in the service letter, as proposed in the NPRM, provide sufficient information to detect compression cracks in the wing spars of ACAC 7, 8, and 11 series airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 10: Cost Impact Is Too Low

What is the commenter's concern? One commenter believes that the cost of installing inspection covers will be significantly greater than we estimated in the NPRM. We infer that the commenter is referring to the additional costs associated with cosmetic paint refinishing costs after the installation of any needed inspection holes/covers.

What is FAA's response to the concern? The cost impact of this AD reflects 11 as-needed inspection holes installed in the bottom of each wing (a total of 22) and 2 as-needed inspection holes/covers installed in the top of each wing. The decision on the number and location of any as-needed inspection holes/covers is at the discretion of the inspector in order to adequately inspect the entire surface of both wing spars.

Cosmetic considerations are not reflected. If you utilize the alternative inspection method referenced in ACAC Service Letter 406, Revision A, dated May 6, 1998, the number of as-needed inspection holes/covers would be reduced. This would further reduce the cost impact of this AD.

We are not changing the AD based on these comments.

Comment Issue No. 11: Provide Additional Inspection Guidance to Service Letter 406A and/or Require Additional Training for Inspectors

What is the commenters' concerns? Five commenters state that compression cracks are extremely difficult to detect and are easily overlooked. Because of this, the commenters believe that FAA should:

—Include additional guidance to the AD to assure a thorough inspection is performed; and

—Require mechanics to obtain additional training in the detection of compression cracks on ACAC 7, 8, and 11 series airplanes.

What is FAA's response to the concerns? We concur that the compression cracks are difficult to detect and mechanics could easily overlook them if they are not experienced in detecting damage specific to wood structure. ACAC Service Letter 406, Revision A, dated May 6, 1998, contains a detailed description of compression cracks. This service letter also:

—Includes a recommendation that mechanics should have previous compression crack detection experience to perform certain methods of inspection; and

—Allows the mechanic to utilize different procedures and techniques to perform a thorough inspection depending on his/her experience, equipment, and the aircraft configuration without mandating a specific number, type, and/or location of inspection holes/covers.

Mechanics have detected compression cracks in aircraft while utilizing ACAC Service Letter 406, Revision A, dated May 6, 1998. We have determined that the procedures in the service letter, as proposed in the NPRM, provide sufficient information to detect compression cracks in the wing spars of ACAC 7, 8, and 11 series airplanes.

We are not changing the AD based on these comments.

Comment Issue No. 12: Proposed Inspection Is Too Broad.

What is the commenters' concern? Two commenters suggest that FAA narrow the areas of inspection for compression cracks. These commenters state that this will not affect the inspection results.

What is FAA's response to the concern? We do not concur. The Inspection: (Bottom/Top) section of ACAC Service Letter 406, Revision A, contains the following:

> Both front and rear spars need to be inspected. The key areas to be concerned with are shown in figure 1.

Figure 1 of this service letter depicts an isolated area that requires inspection of the top and bottom surfaces of the spar (near the strut attachments). The service

letter only includes procedures for the installation of top inspection covers in this area for the front spar. However, as stated as a warning in the service letter, loose rib nails may indicate compression cracks behind the rib flanges and you need to inspect these.

Compression cracks have been detected in locations other than the strut attachment area. The forward or aft face of the spar needs to be inspected for indication of damage. This position has also been supported by an SDR on an ACAC Model 7GCBC airplane on the aft spar. This SDR contains the following information:

> Subject spar indicated irregular lines across the grain at 163 inches from the root end. Fore and aft spar faces cleaned and sanded & the vertical lines remained. Pressure applied to the spar each side indicated slight movement. A hard downward pressure force caused the spar to crack along the apparent fault lines. Submitter enclosed a copy of the page taken from the wood encyclopedia, which describes compression failures in wood. Submitter suggests that this could have been caused by ground contact of the wing tip, sometime in the aircraft's history.

We also have received photos of a badly cracked front spar from an ACAC Model 7GCAA airplane. This compression crack occurred just outboard of the first rib outboard and adjacent to the fuel tank bay and it extended 2/3 upward from the bottom of the spar. The report specifies that the aircraft had just over 500 hours time-in-service (TIS).

We are not changing the AD based on these comments.

Comment Issue No. 13: Improper Wing Rigging Causes Many Compression Cracks

What is the commenter's concern? One commenter believes improper rigging of the aircraft wings causes many compression cracks. This commenter requests additional service information.

What is FAA's response to the concern? While FAA agrees that improper rigging could lead to compression cracks, all information available to us indicates the problem does not result from improper rigging alone. The reporting requirement in the AD will allow us to continue to collect data and investigate the cause of compression cracks and other reported damage. We may initiate further rulemaking action on this subject based on the information received.

We are always open for groups such as the manufacturer and type clubs to work together to come up with valuable information, such as standardized rigging criteria and procedures.

We are not changing the AD based on these comments.

Comment Issue No. 14: Change the Wording in the AD

What is the commenters' concern? Two commenters suggest that the phrase ''to prevent possible compression cracks and other * * *'' that is included in the NPRM be changed to read ''to detect possible compression cracks and other * * *''

What is FAA's response to the concern? We concur that the word detect should be added. We are changing this part of the final rule AD to read:

> * * * to detect and repair or replace damaged wood wing spars. Continued operation with such damage could progress to in-flight structural failure of the wing with consequent loss of control of the airplane.

Comment Issue No. 15: Use Carbon Tetrachloride in the Compression Crack Inspection Method

What is the commenter's concern? One commenter states that use of carbon tetrachloride would improve the compression crack inspection method.

What is FAA's response to the concern? The FAA agrees that the use of carbon tetrachloride may enhance the inspection of unvarnished wood and may have limited benefit if used on varnished spars. However, the Environmental Protection Agency (EPA) has classified carbon tetrachloride as a carcinogen. Health concerns and the availability of this substance prevent us from requiring its use through this AD.

If desired, the application of any commercially-available ''light weight'' (not thick or viscous) wood stain instead of carbon tetrachloride may enhance the inspection process.

We obtained this information from the Forest Products Laboratory, which is a unit of the research organization of the Forest Service, U.S. Department of Agriculture.

We have determined that the application of a high intensity light source directly on the varnished surface, as specified in Service Letter 406, Revision A, dated May 6, 1998, adequately highlights compression cracks.

We are not changing the AD based on these comments.

Comment Issue No. 16: Only Require Inspection During Fabric Recovering

What is the commenters' concern? Two commenters suggest that FAA only require inspection during fabric recovering. These commenters state that this should be adequate to detect wing spar damage.

What is FAA's response to the concern? The FAA does not concur. Information tells us differently. For example, Advisory Circular (AC) 43.13–1B, paragraph 2.2.a., contains the following:

> Polyester fabric deteriorates only by exposure to ultraviolet radiation as used in aircraft covering environment. When coatings completely cover the fabric, its service life is infinite.

Therefore, the special instructions contained in ACAC Service Letter 406, Revision A, dated May 6, 1998, are required to identify certain types of damage that may occur in the span of 10, 20, or more years of service. Additionally, the above-referenced AC also specifies ''Therefore, it is very important to * * * provide adequate inspection access to all areas of (man-made) fabric covered components * * *''

We are not changing the AD based on these comments.

Comment Issue No. 17: Preflight of Aircraft Should Include Wing Flexing

What is the commenter's concern? One commenter states that he was taught to always ''jack the wings back and forth'' during the preflight inspection. The commenter recommends we consider adding this preflight technique to the AD. Since the commenter did not elaborate on the reason for this technique, we infer that the commenter believes this technique will help to audibly detect wing spar damage.

What is FAA's response to the concern? The FAA does not concur. This technique may not detect most types of damage and may actually initiate damage if performed too aggressively.

We are not changing the AD based on these comments.

The FAA's Determination and an Explanation of the Provisions of the AD

What have we decided? After careful review of all available information related to the subject presented above, including the above-referenced comments, FAA has determined that:

—Air safety and the public interest require the adoption of the rule as proposed except for the changes described in the above comment disposition and minor editorial corrections; and

—These changes and minor corrections will not add any additional burden upon the public than was already proposed.

What does this AD require? This AD retains the inspection and repair or

replacement requirements of AD 98–05–04 for the ACAC Model 8GCBC airplanes; extends all these actions to all ACAC 7, 8, and 11 series airplanes, except the inspections are not repetitive for certain 7 and 11 series airplanes; requires that all damage be reported to FAA; and incorporates alternative methods of accomplishing certain actions.

Why is the compliance time in calendar time instead of hours time-in-service? The compliance time of this AD is presented in calendar time and TIS. We are utilizing repetitive inspection compliance times that will coincide with the owner's/operator's annual inspection program. This should have the least impact upon operators because the costs of having the airplane out of service can be absorbed with regularly scheduled down-time.

To assure that compression cracks do not go undetected in the wood spars of the affected airplanes, we are using the following compliance times:

1. The initial inspection at the first annual inspection that occurs 30 calendar days or more after the effective date of the AD or within 13 calendar months after the effective date of the AD, whichever occurs later; and

2. The repetitive inspections (for those airplanes affected) thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

How did we determine the cost impact of this AD? The following cost analysis is based on the presumption that 26 as-needed inspection holes/covers (11 per wing on the bottom surface and 2 per wing on the top surface) will be installed on each affected airplane, in order to complete a thorough inspection in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. All of these inspection holes/covers may not be needed, which will reduce the cost impact upon U.S. operators of the affected airplanes.

How many airplanes are impacted by this AD? The FAA estimates that 6,701 airplanes in the U.S. registry will be affected by this AD.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate that it will take approximately 6 workhours (Installations: 5 workhours; Initial Inspection: 1 workhour) per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane will have 11 as-needed standard inspection holes/covers per wing bottom surface and 2 as-needed inspection holes/covers per wing top surface (total of 26 new covers per airplane) installed. If the airplane needs more inspection covers installed (*e.g.,* a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,369,052, or $652 per airplane.

What about the cost of repetitive inspections and possible repairs and replacements? These cost figures are based on the presumption that no affected Model 8GCBC airplane owner/operator has accomplished the installations or the initial inspection as currently required by AD 98–05–04, and do not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane.

However, each repetitive inspection will cost substantially less than the initial inspection because the initial cost of the as-needed inspection hole/cover installations will not be repetitive. If installed, as-needed inspection holes/covers allow easy access for the inspection of the wood spars, and the compliance time will enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), and by adding a new AD to read as follows:

2000–25–02 American Champion Aircraft Company (ACAC): Amendment 39–12036; Docket No. 98–CE–121–AD; Supersedes AD 98–05–04, Amendment 39–10365.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models, all serial numbers, certificated in any category, that are equipped with wood wing spars:

(1) Group 1 airplanes: ACAC Models 7AC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16B), S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 11AC, S11AC, 11BC, S11BC, 11CC, and S11CC airplanes that have not been modified to incorporate an engine with greater than 90 horsepower.

(2) Group 2 airplanes: ACAC Models 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7KC, 7KCAB, 8GCBC, and 8KCAB airplanes; and any of the airplane models referenced in paragraph (a)(1) of this AD that have been modified to incorporate an engine with greater than 90 horsepower.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and repair or replace damaged wood wing spars. Continued operation with such cracks and damage could progress to an in-flight structural failure of the wing with consequent loss of control of the airplane.

(d) *What actions must be accomplished on all Group 1 airplanes to address this problem?* For any Group 1 airplane as referenced in paragraph (a)(1) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after January 19, 2001 (the effective date of this AD), whichever occurs later.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, ''Bend-A-Light''). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective day of this AD), any airplane is involved in an accident/incident that involves wing damage (*e.g.*, wing surface deformations such as abrasions, gouges, scratches, or dents, etc.), accomplish the inspection required in paragraph (d)(1) of this Ad.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instructions in ACAC Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies as an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, ''Bend-A-Light''). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirements: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of this AD), whichever occurs later.	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket No. 98–CE–121–AD, 2300 E. Devon avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. You may also file electronically as discussed in this AD.
(i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total hours time-in-service (TIS) on the damaged wing.		
(ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600*. Because you will lose access to the report once you electronically submit it, we recommend that you print two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records.		
(iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 *et seq.*). The OMB assigned this approval Control Number 2120–0056.		

(e) *What actions must be accomplished on all Group 2 airplanes to address this problem?* For any Group 2 airplane as referenced in paragraph (a)(2) of this AD, the following must be accomplished to address the problem:

Action	Compliance time	Procedures
(1) Inspection Requirements: Inspect (detailed visual) the entire length of the front and rear wood wing spars for cracks, compression cracks, longitudinal cracks through the boltholes or nail holes, or loose or missing rib nails. We will refer to these conditions as damage throughout the rest of this section.	Initially inspect at the first annual inspection that occurs 30 calendar days or more after January 19, 2001 (the effective dae of this AD) or within the next 13 calendar months after January 19, 2001 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service (TIS) or 12 calendar months, whichever occurs first.	Accomplish in accordance with the instructions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulleting specifies an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, ''Bend-A-Light''). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.

Action	Compliance time	Procedures
(2) Additional Inspection Requirements: If, after January 19, 2001 (the effective date of this AD), any airplane is involved in an accident/incident that involves wing damage (*e.g.*, wing surface deformations such as abrasions, gouges, scratches, or dents, etc.), accomplish the inspection required in paragraph (e)(1) of this AD.	Prior to further flight after each accident/incident that involved wing damage.	Accomplish in accordance with the instuctions in American Champion Aircraft Corporation (ACAC) Service Letter No. 406, Revision A, dated May 6, 1998. This service bulletin specifies an FAA-approved inspection option using a high-intensity flexible light (*e.g.*, ''Bend-A-Light''). A regular flashlight must not be used for this portion of the inspection. Alternative FAA-approved inspection options are listed in this service bulletin.
(3) Replacement Requirements: If any damage is found during any inspection required by this AD, repair or replace the wood spar.	Prior to further flight after the inspection where the damage is found.	In accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques, and Practices; or other data that is FAA-approved for wing spar repair or replacement.
(4) Reporting Requirement: If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA. (i) Include the airplane model and serial number, the extent of the damage (location and type), and the number of total TIS on the damaged wing. (ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at *http://www.mmac.jccbi.gov/afs/afs600*. Because you will lose access to the report once you electronically submit it, we recommend printing two copies prior to submitting the report and forward one to the Chicago ACO and keep the other for your records. (iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (14 U.S.C. 3501 *et seq.*). The OMB assigned this approval Control Number 2120–0056.	Within 10 days after the inspection where the damage was found or within 10 days after January 19, 2001 (the effective date of this AD), whichever occurs later.	Mail the information to: FAA, Chicago Aircraft Certification Office (ACO), Attention: Docket No. 98–CE–121–AD, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. You may also file electronically as discussed in this AD.

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

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

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

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

(2) ACAC Service Letter 406, Revision A, and ACAC Service Letter 417, Revision C, both dated May 6, 1998, specify additional inspection and installation alternatives over that included in the original issue of these service letters. All inspection and installation alternatives presented in these service letters are acceptable for accomplishing the applicable actions of this AD.

(3) Alternative methods of compliance approved in accordance with AD 98–05–04, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (817) 294–7697; facsimile: (817) 294–7834.

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

(i) *Are any service bulletins incorporated into this AD by reference?* The inspections required by this AD must be done in accordance with American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: ''www.amerchampionaircraft.com''. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Are other AD's affected by this action?* This amendment supersedes AD 98–05–04, Amendment 39–10365.

(k) *When does this amendment become effective?* This amendment becomes effective on January 19, 2001.

Issued in Kansas City, Missouri, on December 4, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31450 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–365–AD; Amendment 39–12041; AD 2000–25–07]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes. This action requires repetitive inspections of the aft end of each inboard flap track of the wing outboard flap, and corrective actions, if necessary. This action is necessary to detect and correct damage of the aft end of each flap track, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–365–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. 2000–NM–365–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S; FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that cracking of the aft end of an inboard flap track of the wing outboard flap was found on a Model 737–200 series airplane having improved flap tracks installed. The cracking was found during an inspection that was conducted to resolve problems with the trim that occurred during flight. The airplane had accumulated 38,484 flight cycles. The inner and outer webs of the track, as well as the upper and lower flanges, were severed. The only component holding the aft end of the flap track together was the fail-safe bar, which was bolted to the flap track. There was also a small section broken off the upper outboard chord. Further investigation revealed that the cracks were caused by corrosion at the fasteners that attach the fail-safe bar to the inner and outer webs. Such conditions, if not detected and corrected, could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing All Operator Message (AOM) M–7200–00–01854, dated July 27, 2000, which describes procedures for a close (detailed) visual inspection to detect damage (corrosion, cracking) of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap, and corrective actions. The corrective actions consist of, among other things, repair or rework of any damaged flap tracks.

Explanation of the 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, this AD is being issued to detect and correct damage of the aft end of each flap track at the wing buttock line of the inboard flap track of the wing outboard flap, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane. This AD requires accomplishment of the inspection and corrective actions specified in the service information described previously, except as discussed below.

Differences Between All Operators Message and This AD

Operators should note that the effectivity listing of the AOM specifies all Boeing Model 737–100 and –200 series airplanes. However, this AD is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes on which the flap tracks have certain Boeing part numbers. The subject flap tracks may have been removed from an airplane and re-installed, without being inspected, on another airplane. Therefore, the FAA finds it necessary to revise the applicability of this AD by limiting the repetitive inspections to only certain Boeing Model 737–100, –200, and –200C series airplanes on which certain flap tracks have been installed.

The AOM specifies a one-time close visual inspection of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap. This AD requires the applicable inspection to be repeated at intervals not to exceed 1,200 flight cycles, regardless of detection of cracking. The FAA has determined that, because of the safety implications and consequences associated with fracture of the aft end of each inboard flap track of the wing outboard flap, repetitive inspections are necessary.

The AOM references only one flap track part number (P/N) 65–46428–25. The FAA has determined that there are other flap tracks with similar configurations at the aft end that have different P/N's, and those flap tracks would be subject to the same unsafe condition.

Additionally, the AOM specifies that the manufacturer may be contacted for disposition of certain repair conditions, however, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

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

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–365–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–25–07 Boeing: Amendment 39–12041. Docket 2000–NM–365–AD.

Applicability: Model 737–100, –200, and –200C series airplanes; on which the left- or right-hand inboard flap tracks of the wing outboard flap have a part number (P/N) listed in Table 1 (below) of this AD; certificated in any category.

TABLE 1.—BOEING FLAP TRACKS SUBJECT TO THIS AD

Name	Part Number
Boeing	65–46428–9
	65–46428–15
	65–46428–17
	65–46428–19
	65–46428–21
	65–46428–23
	65–46428–25
	65–46428–27
	65–46428–33
	65–46428–35

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the aft end of each inboard flap track of the wing outboard flap, which could result in loss of the outboard trailing edge flap and consequent loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Do a detailed visual inspection to detect damage (corrosion, cracking) of the aft end of the left- and right-hand inboard flap tracks of the wing outboard flap, per Boeing All Operator Message (AOM) M–7200–00–01854, dated July 27, 2000; at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

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

(1) Within 30 days after the effective date of this AD.

(2) Within 1,200 flight cycles after the last documented inspection or overhaul of the aft end of each flap track.

(3) Before the accumulation of 15,000 total flight cycles.

Corrective Actions

(b) If any damage (corrosion, cracking) is detected, before further flight, repair or rework the flap track per the ''Repair and Rework Instructions'' specified in Boeing AOM M–7200–00–01854, dated July 27, 2000. Where the AOM specifies that the manufacturer may be contacted for

disposition of certain corrective actions (*i.e.,* repair and/or rework of the flaps), this AD requires such repair and/or rework to be done per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) 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.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: 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

(d) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing All Operator Message M–7200–00–01854, dated July 27, 2000. This incorporation by reference was approved by the Director of the Federal Register per 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

(f) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on December 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31448 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–16]

RIN 2120–AA66

Establishment of Restricted Area, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area 3203D (R–3203D) at Orchard, ID. The Idaho Army National Guard has requested that this restricted area be established to support its annual training requirements. This restricted area will be established adjacent to the existing R–3203A and be used for a maximum of three weeks annually.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 25, 2000, the FAA proposed to establish R–3203D, at Orchard, ID, to provide essential ground maneuvering space to meet the Idaho Army National Guard annual training requirements (65 FR 24141). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received objecting to the proposal. Except for editorial changes, and minor corrections to the Southern boundary of R–3203D, aligning it with the boundary of the existing R–3202A, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated October 2, 2000.

The Rule

This amendment to 14 CFR part 73 (part 73) establishes R–3203D, Orchard, ID, adjacent to the existing R–3203A to assist the Idaho Army National Guard annual training. The restricted area will be effective for a period of time not exceeding three weeks annually. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different firing points, has created the need to expand the available restricted airspace, for a period of time each year, to provide for more effective annual training tests. All artillery firing will be directed into existing impact areas located approximately in the center of R–3203A. This restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing restricted area.

The restricted area will be utilized for a period of time not exceeding three weeks per year by the Idaho Army National Guard Field Artillery and will be released to the FAA for public use during periods when it is not required for military training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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.

Environmental Review

The FAA has reviewed the environmental analysis contained within the Army National Guard Supplemental Environmental Assessment for the fielding of the Paladin Weapon System at Orchard Training Area. We find it provides the requisite update of the environmental conditions presented in the Army National Guard Environmental Impact Statement (ARNG EIS) dated August 1988 entitled ''Orchard Training Areas; Birds of Prey Advisory Committee; Endangered Species Survey.''

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3203D Boise, ID, Orchard Training Area [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′33″ W.; at lat. 43°17′51″ N., long. 116°16′25″ W.; at lat. 43°19′02″ N., long. 116°14′45″ W.; at lat. 43°19′02″ N., long. 116°06′36″ W.; at lat. 43°15′58″ N., long. 116°01′12″ W.; at lat. 43°15′00″ N., long. 116°01′03″ W.; at lat. 43°17′00″ N., long. 116°05′03″ W.; at lat. 43°17′00″ N., long. 116°12′03″ W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance not to exceed three weeks annually.

Controlling agency. FAA Boise ATCT.

Using agency. Commanding General Idaho Army National Guard.

* * * * *

Issued in Washington, DC, on December 12, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–32176 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30221; Amdt. No. 426]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, D.C. on December 12, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption for the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

Part 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS

[Amendment 426 effective date: January 25, 2001]

From	To	MEA
Color Routes		
§ 95.10 Amber Federal Airway 7 Is Amended To Read in Part		
CAMPBELL LAKE, AK NDB	MINERAL CREEK, AK NDB	12000

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 426 effective date: January 25, 2001]

From	To	MEA
§ 95.1001 District Routes—U.S.		
Atlantic Routes—AR001 Is Amended To Read in Part		
TORRY, FL FIX *18000—MRA MAA—45000	*METTA, SC FIX	25000
Atlantic Routes—AR003 Is Amended To Read in Part		
OLDEY, SC FIX *18000—MRA MAA—45000	*PANAL, OA FIX	2500
PANAL, OA FIX MAA—45000	CAROLINA BEACH, NC NDB	2500
Atlantic Routes—AR004 Is Amended To Read in Part		
Ashly, SC NDB *18000—MRA	*METTA, SC FIX.	
Atlantic Routes—AR007 Is Amended To Read in Part		
ADOOR, FL FIX *18000—MRA MAA—45000	*MILOE, OA FIX	25000
MILOE, OA FIX *18000—MRA MAA—45000	*PANAL, OA FIX	2500
PANAL, OA FIX MAA—45000	DIXON, NC NDB/DME	2500
Atlantic Routes—AR014 Is Amended To Read in Part		
*METTA, SC FIX MAA—45000 *18000—MRA	DIXON, NC NDB/DME	18000
§ 95.6001 Victor Routes—U.S.		
§ 95.6066 VOR Federal Airway 66 Is Amended To Delete		
ABILENE, TX VORTAC	BOWIE, TX VORTAC	3500
BOWIE, TX VORTAC	BONHAM, TX VORTAC	3700
BONHAM, TX VORTAC	SULPHUR SPRINGS, TX VOR/DME	2500
SULPHUR SPRINGS, TX VOR/DME	TEXARKANA, AR VORTAC	2000
§ 95.6069 VOR Federal Airway 69 Is Amended To Delete		
BELCHER, LA VORTAC *3000—MRA	*COTTA, LA FIX	2000
COTTA, LA FIX *3000—MRA	*GOURD, LA FIX	2000
GOURD, LA FIX	EL DORADO, AR VORTAC	20000
§ 95.6094 VOR Federal Airway 94 Is Amended To Read in Part		
DEMING, NM VORTAC **1000—MRA **7700—MOCA	*MOLLY, NM FIX	**9000
§ 95.6163 VOR Federal Airway 131 Is Amended To Delete		
MC ALESTER, OK VORTAC	BASAY, OK FIX	2700
HOFFE, OK FIX	OKMULGEE, OK VOR/DME	2600
§ 95.6163 VOR Federal Airway 163 Is Amended To Delete		
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000
MILLSAP, TX VORTAC *2500—MOCA	BOWIE, TX VORTAC	*3000
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000
ARDMORE, OK VORTAC	WILL ROGERS, OK VORTAC	3000

REVISIONS TO I.F.R. ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 426 effective date: January 25, 2001]

From	To	MEA
§ 95.6208 VOR Federal Airway 208 Is Amended To Read in Part		
HANKSVILLE, UT VORTAC	CARBON, UT VOR/DME	10000
§ 95.6305 VOR Federal Airway 305 Is Amended To Delete		
BELCHER, LA VORTAC	*COTTA, LA FIX	2000
*3000—MOCA		
COTTA, LA FIX	*FOSTE, LA FIX	2000
*3500—MRA		
FOSTE, LA FIX	EL DORADO, AR, VORTAC	2000
§ 95.6358 VOR Federal Airway 358 Is Amended To Read in Part		
SAN ANTONIO, TX VORTAC	GUADA, TX FIX	*4000
*2700—MOCA		
GUADA, TX FIX	STONEWALL, TX VORTAC	4000
§ 95.6358 VOR Federal Airway 358 Is Amended To Delete		
WACO, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAX	MILLSAP, TX VORTAC	3000
MILLSAP, TX VORTAC	BOWIE, TX VORTAC	*3000
*2500—MOCA		
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000
ARDMORE, OK VORTAC	ALEXX, OK FIX	3000
ALEXX, OK FIX	CAMAF, CA FIX	3000
CAMAF, CA FIX	WILL ROGERS, OK VORTAC	3000
§ 95.6382 VOR Federal Airway 382 Is Amended To Delete		
BRYCE CANYON, UT VORTAC	*GREEL, UT FIX	**16000
*10000—MAA		
*13300—MOCA		
GREEL, UT FIX	*SAKES, UT FIX	**16000
*1400—MCA SAKES, UT FIX, SW BND		
*13300—MOCA		
SAKES, UT FIX	GRAND JUNCTION, CO VORTAC	*11000
*9200—MOCA		
§ 95.6457 VOR Federal Airway 457 Is Amended To Read		
ILIAMNA, AK NDB/DME	*AWOMY, AK FIX	**5300
	W BND	*5300
	E BND	*9000
*7000—MCA AWOMY FIX	E BND	
*5300—MOCA		
AWOMY, AK FIX	*MOFOF, AK FIX	9000
*7000—MCA MOFOF FIX	W BND	
MOFOF, AK FIX	KENAI, AK VOR/DME	
	W BND	*3000
	E BND	*9000
*2700—MOCA		
§ 95.6568 VOR Federal Airway 568 Is Amended To Read in Part		
SAN ANTONIO, TX VORTAC	GUADA, TX FIX	*4000
*2700—MOCA		
GUADA, TX FIX	STONEWALL, TX VORTAC	4000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7151 Jet Route No. 151 Is Amended To Read in Part			
VULCAN, AL VORTAC	FARMINGTON, MO VORTAC	25000	41000

From	To	Changeover points	
		Distance	From
95.8003 VOR Federal Airway Changeover Points ALASKA V–457 Is Added To Read			
ILAMNA, AK NDB/DME	KENAI, AK VOR/DME	47	ILIAMNA

[FR doc. 00–32178 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 000817239–0239–01]

RIN: 0691–AA37

Direct Investment Surveys: BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the quarterly BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate.

The BE–577 survey is a mandatory survey and is conducted quarterly by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send BE–577 survey forms to potential respondents each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports should be filed within 45 days. The survey is a cut-off sample survey that obtains data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents.

These final rules increase the exemption level for the survey—the level at or below which reports are not required—from $20 million to $30 million in total assets, sales or gross operating revenues, and net income (positive or negative) of the U.S.-owned foreign business enterprise. This change will reduce the number of respondents that otherwise must report in the survey, thus reducing respondent burden, particularly for small companies.

EFFECTIVE DATE: These final rules will be effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On September 21, 2000 the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, volume 65, No. 184, FR 57121–57123, a notice of proposed rulemaking setting forth revised reporting requirements for the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 806.14 to set forth reporting requirements for the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. BEA will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible—

(1) Conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States; and

(2) Conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The quarterly survey of U.S. direct investment abroad collects data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The BE–577 is a cut-off sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of foreign affiliate.

Under these final rules, BEA is increasing the exemption level for reporting on the BE–577 quarterly survey from $20 million to $30 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income at or below which a Form BE–577 is not required. Thus, if a foreign business is owned 10 percent or more by the U.S. parent, but its total assets, sales or gross operating revenues, and net income all are $30 million (positive or negative) or less, the U.S. parent will not have to report it. The exemption level for the BE–577 survey was last raised following the 1994 benchmark survey and was first applicable to the quarterly survey covering the second quarter of 1995. The current changes in exemption level will first apply to the reports for the first quarter of 2001.

BEA has made a few changes to the report forms themselves in addition to raising the exemption level. These changes, however, did not require rule changes and are not reflected in the final rules. BEA is extending the use of the North American Industry Classification System (NAICS) to the BE–577 survey. NAICS is already being used on all BEA surveys of foreign direct investment in the United States and BEA used NAICS to collect industry information on the 1999 BE–10

benchmark survey of U.S. direct investment abroad. In addition, BEA is modifying the detail on affiliated services by type of service by dropping the category for communication services in the by-type breakdown and adding the presumably larger measurement and consulting and research and development categories. BEA is also clarifying the instructions.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0004) under the Paperwork Reduction Act. Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey is expected to result in the filing of about 12,500 foreign affiliate reports by an estimated 1,500 U.S. parent companies. A parent company must file one form per affiliate. The respondent burden for this collection of information is estimated to vary from 0.5 hours to 4 hours per response, with an average of 1.25 hours 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. Because reports are filed 4 times per year, 50,000 responses annually are expected. Thus the total annual respondent burden of the survey is estimated at 62,500 hours (12,500 respondents times 4 times 1.25 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0004, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Although the BE–577 survey does not itself collect data on the size of the U.S. companies that must respond, data collected on related BEA surveys indicate that the U.S. companies that have direct investments abroad tend to be quite large. The exemption level for the BE–577 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has assets, sales, or net income greater than the exemption level, it must be reported. Usually, the U.S. parent company that is required to file the report is many times larger than its largest foreign affiliate.

Small U.S. businesses tend to have few, if any, foreign affiliates and the foreign affiliates that they do own are small. With the increase in the exemption level for the BE–577 survey from $20 million to $30 million (stated in terms of the foreign affiliate's assets, sales, and net income), even fewer small U.S. businesses will be required to file reports for their foreign affiliates. The estimated annual cost to a U.S. business reporting for five or fewer foreign affiliates is estimated to be less than $1,000.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Penalties, Reporting and recordkeeping requirements, United States investment abroad.

Dated: December 1, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§806.14 [Amended]

2. Section 806.14(e) is amended by removing ''$20,000,000'' and adding ''$30,000,000'' in its place.

[FR Doc. 00–32090 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 000714208–0208–01]

RIN 0691–AA40

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

The BE–11 survey is a mandatory survey and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send the annual survey to potential respondents in March of each year; responses will be due by May 31. The last BE–11 annual survey was conducted for 1998. (A BE–11 survey is not conducted in a year, such as 1999, when a BE–10 Benchmark Survey of U.S. Direct Investment Abroad is conducted.) The survey is a cut-off sample survey that obtains financial and operating data covering the overall operations of nonbank U.S. parent companies and their nonbank foreign affiliates.

These final rules increase the exemption level for reporting on the BE–11B(SF) short form and the BE–11C form from $20 million to $30 million; increase the exemption level for reporting on the BE–11B(LF) long form from $50 million to $100 million; and direct U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items on the BE–11A form. These changes will reduce the number of reports that otherwise must be filed, thus reducing respondent burden, particularly for small companies.

EFFECTIVE DATE: These final rules will be effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, volume 65, No. 184, FR 57123–57126, a notice of proposed rulemaking setting forth revised reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. BEA will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible—

(1) Conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States; and

(2) Conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment which may have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey of U.S. direct investment abroad provides a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The BE–11 is a cut-off sample survey that covers all foreign affiliates (and their U.S. parent companies) above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

The survey consists of an instruction booklet, a claim for not filing the BE–11, and the following report forms:

1. Form BE–11A—Report for nonbank U.S. Reporters;
2. Form BE–11B(LF) (Long Form)—Report for majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $100 million (positive or negative);
3. Form BE–11B(SF) (Short Form)—Report for majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $30 million, but not greater than $100 million (positive or negative); and
4. Form BE–11C—report for minority-owned nonbank foreign affiliates with assets, sales, or net income greater than $30 million (positive or negative).

Under these final rules, BEA is increasing the exemption level for reporting on the BE–11B(SF) short form and BE–11C form from $20 million to $30 million and the exemption level for reporting on the BE–11B(LF) long form from $50 million to $100 million. The exemption level for these forms is the level of a foreign affiliate's assets, sales, or net income at or below which a form is not required. In addition to raising the exemption levels, BEA is directing U.S. Reporters with total assets, sales, or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items on the BE–11A form.

For fiscal year 2002 only, these final rules will require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE–11C, along with affiliates owned between 20 and 50 percent. In all years, reporting on Form BE–11C is required if an affiliate is owned between 20 and 50 percent by all U.S. Reporters combined and if its assets, sales, or net income exceed $30 million (positive or negative). Primarily to reduce reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported annually. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad (the BE–10), covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1999 is now being conducted; the next benchmark survey will cover the year 2004. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least one year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates are very large and have a sizable impact on the estimates. Under these final rules, submission of Form BE–11C for nonbank foreign affiliates owned directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed $100 million (positive or negative) would be required for fiscal year 2002 only.

These new rules will first apply to the survey covering fiscal year 2000. The 2000 forms will be mailed out in March 2001 and will be due May 31, 2001.

BEA has made a few changes to the report forms themselves. These changes, however, did not require rule changes and are not reflected in the final rules. BEA is extending the use of the North American Industry Classification System (NAICS) to the annual survey. NAICS is already being used on all BEA surveys of foreign direct investment in the United States and BEA used NAICS to collect industry information on the 1999 BE–10 benchmark survey of U.S. direct investment abroad.

In addition to the change in industry classification, BEA is adding equity ownership, interest received, and interest paid to the BE–11B(LF); expanding the owner's equity section on the BE–11B(LF); reducing the detail collected on the composition of external finances of the foreign affiliate on the BE–11B(LF); and deleting production royalty payments on the BE–11B(LF). Finally, BEA is making improvements in the layout of the survey forms, and in the placement and clarify of instructions. The design follows that used for the BE–10 benchmark survey.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608–0053) under the Paperwork Reduction Act. Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey is expected to result in the filing of reports from about 1,500 respondents. The respondent burden for this collection of information is estimated to vary from 4 to 3,000 hours per response, with an average of 68.4 hours 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. Thus the total respondent burden of the survey is estimated at 102,600 hours (1,500 respondents times 68.4 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. U.S. companies that have direct investments abroad tend to be quite large. The exemption level for the BE–11 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has assets, sales, or net income greater than the exemption level, it must be reported on Form BE–11B(LF), BE–11B(SF), or BE–11C. Usually, the U.S. parent company that is required to file the report is many times larger than its largest foreign affiliate. With the increase in the exemption level for the BE–11 survey from $20 million to $30 million, even fewer small U.S. businesses will be required to file. To further reduce the reporting burden on small businesses, U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) are required to report only selected items on the BE–11A form for U.S. Reporters in addition to forms they may be required to file for their foreign affiliates.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Penalties, Reporting and recordkeeping requirements, United States investment abroad.

Dated: December 1, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O., 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.14(f)(3)(i), (f)(3)(ii), (f)(3)(iii), and (f)(3)(iv)(A) through (C), are revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) * * *

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on form BE–11B(LF), BE–11B(SF), or BE–11C. If the U.S. reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise.

(A) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $100 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), BE–11B(SF), or BE–11C, as applicable, for each nonexempt foreign affiliate.

(B) If for a nonbank U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 27 and Part IV. It must also file a Form BE–11B(LF), BE–11B(SF), or BE–11C, as applicable, for each nonexempt foreign affiliate.

(ii) (Form BE–11B(LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE–11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $100 million (positive or negative) at the end of, or for, for the affiliate's fiscal year.

(B) A BE–11B(SF)(Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $30 million (positive or negative), but for which no one of these items was greater than $100 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph(f)(3)(ii)(A) of this section was greater than $30 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2002 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) * * *

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $30 million (positive or negative).

(B) For fiscal year 2002 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(C) For fiscal years other than 2002, it is less than 20 percent owned, directly or indirectly by all U.S. Reporters of the affiliate combined.

* * * * *

[FR Doc. 00–32089 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 97–2295 (Formerly 96–47), 97–3032, 98–3644, 98–4720, 99–5704, 99–6298, 99–6575, and 99–6576]

RIN 2125–AE11, AE25, AE38, AE50, AE58, AE66, AE71, and AE72

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices for Streets and Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

SUMMARY: This document contains the complete revision to the MUTCD as adopted by the FHWA. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F and recognized as the national standard for traffic control devices on all public roads. The new MUTCD has incorporated technological advances and application change, as well as improved the overall organization to clarify the discussion of the content.

DATES: The final rule is effective January 17, 2001. However, the FHWA is setting later compliance dates for some portions of the MUTCD; see the **SUPPLEMENTARY INFORMATION** section for further details. Incorporation by reference of the publication listed in the regulations is approved by the Director of the **Federal Register** as of January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest D. L. Huckaby, Office of Transportation Operations (HOTO–1), (202) 366–9064, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3412, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov/nara.*

The text for the millennium edition of the MUTCD is available from the FHWA Office of Transportation Operations' web site at: *http://mutcd.fhwa.dot.gov*

Background

The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions (*i.e.,* both English and metric dimensions will be included in the text) and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD.

Although the Federal Highway Administrator is responsible for adopting the changes contained in this new millennium edition, the National Committee on Uniform Traffic Control Devices (NCUTCD) took the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the National Association of County Engineers (NACE), the American Public Works Association (APWA), the Institute of Transportation Engineers (ITE), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting, reformatting and editing the entire 1988 MUTCD into an updated and more user friendly document.

The FHWA reviewed and incorporated most of the NCUTCD's proposals for revising the MUTCD in several **Federal Register** notices of proposed amendments. This document contains the disposition of the comments to the dockets of the notices of proposed amendments which were published in the **Federal Register** shown in the table below. The table also shows the number of letters submitted to each docket and the number of separate comments addressed as part of the FHWA review and deliberation.

Adopted changes to the MUTCD text, as discussed herein, are available on the MUTCD Internet site *(http://mutcd.fhwa.dot.gov).* The final rule text will be available on the MUTCD Internet site in December 2000. Anyone unable to download the text should write to the Federal Highway Administration, Office of Transportation Operations, HOTO–1, 400 Seventh Street, SW., Washington, DC 20590.

TABLE OF NOTICES OF PROPOSED AMENDMENTS PUBLISHED BY FHWA

MUTCD part	Title	Docket number and date	Number of letters received	Separate comment entries
Part 1	General provisions/Definitions	97–3032 12/05/97	24	86
Part 1 (update)	General provisions/Definitions	99–6575 12/30/99	14	60
Chapters 2A,D,E,F,I	Signs	98–3644 06/11/98	47	800
Chapters 2G, 2H	Tourist oriented directional signs, & recreation & cultural interest signs.	98–4720 06/24/99	80	95

TABLE OF NOTICES OF PROPOSED AMENDMENTS PUBLISHED BY FHWA—Continued

MUTCD part	Title	Docket number and date	Number of letters received	Separate comment entries
Chapter 2C	Warning signs	99–5704 06/24/99	42	329
Chapter 2B	Regulatory signs	99–6298 12/21/99	86	304
Part 3	Markings	97–2295 01/06/97	40	247
Part 3 (update)	Markings	99–6575 12/30/99	27	181
Part 4	Signals	97–2295 01/06/97	24	264
Part 4 (update)	Signals	99–6575 12/30/99	111	578
Part 5	Low volume roads	99–6298 12/21/99	23	231
Part 6	Temporary traffic control	99–6576 12/30/99	56	2652
Part 7	Traffic controls for school areas	97–3032 12/05/97	20	156
Part 8	Traffic control systems for railroad-highway grade crossings.	97–2295 01/06/97	29	210
Part 8 (update)	Highway-rail grade crossings	99–6298 12/21/99	23	210
Part 9	Traffic controls for bicycles	98–4720 06/24/99	79	357
Part 10	Traffic controls for highway-light rail grade crossings	99–5704 06/24/99	46	381

Summary of Comments

The FHWA has reviewed the comments received in response to the dockets listed above and other information related to the MUTCD and these proposals. The FHWA is acting on the following items published in the notice of proposed amendments. Each action and its basis is summarized below:

Discussion of Adopted Amendments to Part 1—General Provisions

The FHWA received 146 comments from 38 commenters concerning Part 1. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 62 FR 64324 on December 5, 1997, and at 64 FR 73612 on December 30, 1999.

1. In Part 1 Introduction, the FHWA is incorporating a discussion on defining the following condition headings: STANDARD, OPTION, GUIDANCE, and SUPPORT. This change addresses many comments received regarding the difficulty in distinguishing between distinct sections in previous editions of the MUTCD. In the NPA for Part 1, this discussion was covered in Section 1A.10 MUTCD Changes, Interpretations, and Experimentations. Based on docket comments, the FHWA believes it is important for the reader to see this discussion before proceeding to the other sections of the manual. Therefore, the FHWA is moving this discussion to the Introduction.

The FHWA is also changing the way that these condition headings appear throughout the text. The FHWA received many comments expressing a need for improvement in the blocked headings found in the notice of proposed amendments. An explanation of both the terms and new heading style is included in the Introduction.

Also being added is a new STANDARD statement indicating that any traffic control device design or application provision contained in the MUTCD shall be considered in the public domain. The FHWA will not include any copyrighted or patented devices in the MUTCD with the exception of the Interstate Shield, a copyrighted device developed by the American Association of State Highway and Transportation Officials (AASHTO). Since this is a frequently asked question, the FHWA has decided to include language in the MUTCD to address this policy.

A new GUIDANCE paragraph is added to Part 1 Introduction to discuss the use of the International System of Units, a modernized version of the Metric system, and English units used throughout the MUTCD. The FHWA recommends that a decision be made to consistently use either the International System of Units (Metric) or English units in the design and installation of traffic control devices.

2. In Table I.1, Evolution of the MUTCD, two other revisions to the 1988 MUTCD are added for a total of seven revisions to the 1988 MUTCD, instead of the five revisions previously shown in the table. The FHWA has also added the new millennium edition to this table.

3. In Section 1A.01 Purpose of Traffic Control Devices, paragraph 1, the term ''road users'' is referenced. Road user is the preferred term because it encompasses both motorized and non-motorized traffic. The term ''road user'' is defined in Section 1A.13. The FHWA did not receive any docket comments on this change.

4. In Section 1A.02 Principles of Traffic Control Devices, under the SUPPORT statement, the term ''speed'' is added as a variable that governs the design, operation, placement, and location of various traffic control devices. The traveling speed of road users can affect their ability to appropriately respond to the driving task. The FHWA did not receive any docket comments on this change.

5. In Section 1A.03 Design of Traffic Control Devices, under the STANDARD statement, the term ''colors'' is added to the statement that all symbols not shown in the ''Standard Highway Signs'' [1] book shall be adopted using the

[1] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the 1988

procedures described in Section 1A.10, ''MUTCD Changes, Interpretations, and Experimentations.'' The FHWA did not receive any docket comments on this change.

Also in this section, an OPTION is added to explain that State and local highway agencies may develop word message signs to notify road users of special regulations or situations. The FHWA did not receive any docket comments on this change.

6. In Section 1A.05 Maintenance of Traffic Control Devices, GUIDANCE is added to explain the difference between functional and physical maintenance. The FHWA did not receive any docket comments on this change.

7. In Section 1A.07 Responsibility for Traffic Control Devices, under the STANDARD statement, a reference to 23 CFR 655.603 is added to adopt the MUTCD as the national standard for all traffic control devices, and require that any State or other Federal agency MUTCD shall be in substantial conformance with the national standards. The FHWA did not receive any docket comments on this change.

8. In Section 1A.08 Authority for Placement of Traffic Control Devices, (titled in the 1999 NPA as ''Placement Authority,'') paragraph 1, STANDARD language is added to require that all traffic control devices and any other signs or messages within the street or highway right-of-way shall be placed only as authorized by a public authority or official having jurisdiction for the street or highway. The FHWA did not receive any docket comments on this change.

Also in Section 1A.08, GUIDANCE is added to indicate that any unauthorized traffic control device or any non-essential sign or message placed within the highway right-of-way should be removed. The FHWA did not receive any docket comments on this change.

9. In Section 1A.09 Engineering Study and Engineering Judgment (titled in the 1999 NPA as ''Engineering Study or Judgment Required''), a clarification discussion on the difference between engineering study and engineering judgment is added. The FHWA did not receive any docket comments opposed to adding this discussion.

Also in Section 1A.09, one commenter stated that the word ''required'' in the title of this section (titled in the 1999 NPA as ''Engineering Study or Judgment Required''), conflicts with the GUIDANCE given in this section. The FHWA agrees and has changed the title of this section to ''Engineering Study and Engineering Judgment,'' because that title more appropriately conveys the objective of the section.

The same commenter also recommended that the STANDARD statement, which provides that the inclusion of a traffic control device in the MUTCD is not a legal requirement for their installation, be deleted from this section because he did not see its purpose. The FHWA disagrees because the STANDARD statement complements the GUIDANCE paragraphs in this section that discuss that the decision to use a particular device should be made on the basis of an engineering study or the application of engineering judgment.

10. In Section 1A.10 Interpretations, Experimentations, and Changes, STANDARD language is added to paragraph 1 to prohibit the design, application, and placement of traffic control devices other than those adopted in the MUTCD, unless the process for an interpretation, experimentation, or change is followed.

Also in Section 1A.10, is a new GUIDANCE statement indicating that any request for permission to experiment with a new traffic control device should contain a legally binding statement certifying that the traffic control device is not protected by a patent or a copyright since patented or copyright protected traffic control devices are not permitted in the MUTCD, except for the Interstate Shield.

11. A new Section 1A.13 Definitions of Words and Phrases, is added. Definitions in this section are provided for terms that are universally used throughout the MUTCD. The definitions for terms found in only one section of the MUTCD can be found within the specific section. The FHWA did not receive any docket comments opposed to this change. However, the FHWA did receive editorial comments on some of the definitions, and they are incorporated as minor modifications to the text.

12. A new Section 1A.14 Abbreviations Used on Traffic Control Devices, is added. These abbreviations shall be the STANDARD for word messages used in conjunction with traffic control devices. The FHWA did not receive any docket comments opposed to this change. However, the FHWA did receive editorial comments which have been incorporated as minor modifications to the text.

Discussion of Adopted Amendments to Chapter 2A—General Provisions and Standards

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

13. The heading for Chapter 2A is changed from ''Introduction and General Standards'' to ''General Provisions and Standards.'' This title better describes the discussion in this chapter. There were no docket comments on this change.

14. In Section 2A.01 Function and Purpose of Signs, the STANDARD is modified to make the design and application standards for ''all'' signs dependent on the particular class of highway on which they are used. The 1988 MUTCD only specified ''guide'' signs rather than ''all'' signs. The FHWA has also added ''special purpose roads'' to the list of highway classification definitions in this section. The FHWA received no docket comments on this section.

15. In Section 2A.07 the title is changed from ''Variable Message Signs'' to ''Changeable Message Signs'' which is more commonly used within the transportation field and throughout MUTCD Sections 6F.02 and 6F.52. The FHWA is also referring readers to Section 6F.02 for more detailed discussion on changeable message signs. There were no docket comments on this section.

16. In Section 2A.08 Illumination and Retroreflectivity, two tables are added (Table 2A.1 and 2A.2) to help clarify the text that used to be in Sections 2A.16, 2A.17, and 2A.18 of the 1988 MUTCD. The FHWA received no docket comments on this section. In the STANDARD statement, the requirement of sign retroreflectivity or illumination is extended to include guide signs. This requirement applies to all signs unless specifically stated otherwise in the MUTCD text for a particular sign or group of signs. The FHWA believes this will improve safety and visibility during adverse ambient conditions. There were no docket comments on this section.

17. In Section 2A.10 Shapes, a new Table 2A.3, Use of Shapes, is added. In this new table, the following shapes are for exclusive use: STOP sign, YIELD sign, pennant, crossbuck, and trapezoid. The trapezoid shape is exclusively for recreational signs. However, as one commenter noted, since most recreational signs currently installed are

MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

rectangular, the FHWA has also included the recreation signs in the guide signs category (see double asterisk in new table).

18. In Section 2A.1l Sign Colors, a new Table 2A.4, Uses of Sign Colors is added. The FHWA has also included a statement that the color coordinates and values shall conform to those shown in the color specifications described in the ''Standard Highway Signs'' (SHS) Book.[2] There were no docket comments on this section.

The FHWA believes that including this statement will help promote uniformity of colors where traffic control signs are designed and installed by providing the reader with a specific reference source for determining the proper color coordinates and values.

19. In Section 2A.13 Symbols, paragraph 2 explains that new symbol signs shall be adopted by FHWA based on research evaluation studies to determine comprehension data and recognition/legibility distance for the symbol sign. The FHWA added an OPTION statement for State and/or local highway agencies to conduct these research studies. There were no docket comments on this section.

20. In Section 2A.14 Word Messages, paragraph 2 provides GUIDANCE for determining sign letter heights is added. Sign letter heights should be determined based on 1 inch per 40 feet of legibility distance. The FHWA believes this amendment will improve sign legibility for all road users, especially for older road users whose vision may be diminished. The FHWA received no docket comments on this section.

In paragraph 5, an OPTION is provided for State and local highway agencies to use the combination of lowercase letters with initial uppercase letters for street name signs. In Section 2A.15 of the 1988 MUTCD, this OPTION only applied to destination guide signs and did not give States this flexibility. The FHWA has also eliminated the restriction for using series B alphabets only on street name signs. States now have the flexibility to use other standard series alphabets, as appropriate. There were no docket comments on this section.

21. In Section 2A.17 Overhead Sign Installations, the FHWA removed the restriction for placing signs on bridges located along only ''urban'' freeways and expressways in the OPTION statement. Overhead signs may be placed on ''any'' freeway or expressway bridge where feasible, to enhance safety and economy. This change provides more installation flexibility to State and local highway agencies. There were no docket comments on this section.

22. In Section 2A.18 Mounting Height, paragraph 7 allows State and local highway agencies the OPTION to adjust the mounting height of signs when the sign supports are located near the edge of the right-of-way on a steep backslope. There were no docket comments on this section.

23. In the first paragraph of Section 2A.19 Lateral Offset, a STANDARD is added that requires sign supports within the clear zone to be breakaway or shielded for the safety of the road user particularly in run-off-road incidents. There were no docket comments on this section.

24. In Section 2A.23 Maintenance, GUIDANCE is added to paragraph 2 which recommends that maintenance inspections be conducted both day and night. Although this is a general practice among many engineering and transportation officials, the FHWA believes it is a practice worth reiterating in the MUTCD. There were no docket comments on this section.

25. In Section 2A.24 Wrong-Way Traffic Control, the FHWA has deleted the OPTION and SUPPORT text that appeared in the NPA and modified the figures to more accurately show the typical sign application for wrong-way traffic control. This change helps the text read clearer and is based on the FHWA internal review process which identified inconsistencies, redundancy, and confusion between the text and the accompanying typical figures.

Discussion of Adopted Amendments to Chapter 2B—Regulatory Signs

The FHWA received 304 comments from 86 commenters concerning Chapter 2B Regulatory Signs. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 71358 on December 21, 1999.

26. In Section 2B.03 Size of Regulatory Signs, the FHWA received several comments requesting the addition of a table that depicts sign sizes. The FHWA has adopted a similar format to the one recommended by the NCUTCD that expands the sign category headings to cover additional sizes. Table 2B–1 lists sign sizes for Conventional Roads, Expressways, and Freeways, ''minimum'' and ''oversized'' signs.

27. In Section 2B.04 STOP Sign, paragraph 3, under the STANDARD statement, we proposed text requiring the use of the 4-way supplemental plaque (R1–3) at intersections where all approaches are controlled by STOP signs. This practice was optional in the 1988 MUTCD. The FHWA received one comment in opposition to this adopted change. The FHWA has adopted this requirement because it believes the use of the supplemental plaque will provide additional emphasis and motorist information at the stop location.

The FHWA is providing a phase-in compliance period of 3 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life. This change takes effect immediately for all new installations.

28. The proposed amendment to Section 2B.05 STOP Sign Applications recommended changing the title of this section from ''Warrants for Stop Signs'' to ''STOP Sign Applications.'' This change eliminates the misunderstanding created by the term ''warrants'' which has a ''legal sanctions'' connotation. No commenters objected to this amendment, therefore the FHWA has changed the section title as proposed.

Several commenters indicated disappointment that the GUIDANCE statement in Section 2B.05, paragraph 1, was not upgraded to a STANDARD since many local governments receive frequent requests for STOP signs to be installed for speed control. Traffic engineers would like to have the language in the MUTCD that would back up their decision when faced with political pressure to install STOP signs to control speed. The FHWA does not consider this sufficient justification to elevate this GUIDANCE to a STANDARD requirement, particularly when you consider the potential impacts on local governments. Two commenters questioned why an engineering study, as opposed to an engineering judgment, was not required in the NPA. The FHWA believes that it is more practical to recommend that an engineering study be done for multi-way stops and that engineering judgment be used for one-way or two-way stops.

29. The FHWA received no objections to the proposed language in Section 2B.06 Stop Sign Placement, changing the language from OPTION to GUIDANCE for using STOP lines to supplement a STOP sign. The FHWA believes that the use of the STOP line will provide the road user with additional information for making safe traffic operation decisions, therefore the proposal is adopted.

Also in this section, under GUIDANCE, the FHWA received no comments objecting to the proposed language stating that the STOP signs should not be placed on the far side of

[2] Ibid.

the intersection. The text has been modified to clarify that when only one sign is installed, the STOP sign should not be placed on the far side of the intersection. This would allow the use of a supplemental STOP sign on the left side which may be appropriate in some cases.

30. In Section 2B.07 Multi-way Stop Sign Applications, paragraph 3, the FHWA added GUIDANCE to recommend that the decision to install Multi-way Stop signs should be based on an engineering study. The FHWA offers the same rationale that was provided in Section 2B.05, which addresses the reasoning for the use of engineering judgment as opposed to engineering study.

Several commenters responded to the GUIDANCE statement (in item C.1) which lists the criteria to consider in an engineering study for a multi-way STOP sign installation. There is a misunderstanding that the criteria was reduced from 500 to 300 vehicles per hour. The 1988 MUTCD provides for 500 vehicles per hour from all approaches and 200 combined vehicular and pedestrian units per hour from the minor-street approaches. The revised text provides: ''1. The vehicular volume entering the intersection from the major street approaches (total of both approaches) averages at least 300 vehicles per hour for any eight hours of an average day, and 2. The combined vehicular, pedestrian, and bicycle volume entering the intersection from the minor street approaches (total of both approaches) averages at least 200 units per hour for the same eight hours, with an average delay to minor-street vehicular traffic of at least 30 seconds per vehicle during the highest hour * * * '' This is the same criteria presented in a slightly different manner.

Additionally, Item C.2 of the criteria includes bicycle volumes to the combination volume studies of vehicles and pedestrians. The FHWA believes that bicycle travel is an integral part of traffic control considerations. Therefore, this should improve the traffic data when considering installation of traffic control devices. One commenter pointed out that typical count methods do not allow for comprehensive counting of bicycles over long time periods. The FHWA agrees that manual counts are routinely done over an 8–12 hour period in order to gather pedestrian and bicyclist data. It is true that automatic 24-hour counts, typically done by machines with rubber tubes across the roadway, cannot count bicycles; however, video methods offer a highly effective means to capture this data. Since the language is provided under GUIDANCE, the FHWA does not believe that this will cause an inconvenience to traffic engineers.

31. In Section 2B.11 Speed Limit Sign, a sentence is added to the OPTION statement to read: ''A changeable message sign that changes for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times.'' In the NPA this was suggested as an addition to Section 2B.13 Night Speed Limit Sign. After reconsideration by the FHWA and from comments provided on this issue, it was determined that it be placed in Section 2B.11, because this is not necessarily a night condition.

32. In Section 2B.16 Reduced Speed Ahead Sign (R2–5 series), the FHWA received one comment regarding the proposed assembly method B under OPTION which when applied to a metric assembly, could require a five-sign configuration for an advance notice of change in speed limit. The FHWA believes that since this method is ''optional'' and not a requirement, its inclusion under OPTION is appropriate.

Also in this section, one comment was received suggesting that the background color for the supplemental plaques in GUIDANCE be changed from the color yellow to white so that motorists will not confuse this sign assembly with the School Speed Limit Sign Assembly. The FHWA agrees and has modified the language to read ''When used with Speed Limit assemblies, the supplemental plaques should have a white background with a black legend and border, except for the METRIC plaque (see Section 2B.11).'' The FHWA believes that it is essential that the METRIC plaque be distinct to draw attention to the use of metric units in that particular jurisdiction. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after the normal service life. This change is effective immediately for new sign installations.

33. In Section 2B.17 Turn Prohibition Signs (R3–1 to R3–4) (referenced in the NPA as Section 2B.15), the FHWA is combining the language for the Turn Prohibition and the U-Turn Prohibition signs into one section. No negative comments were received for this amendment.

The FHWA received one comment suggesting that the following text be added as an OPTION: ''Where ONE WAY signs are used, Turn Prohibition signs may be omitted (see Section 2B.31).'' The FHWA agrees and is adding this language because this may reduce the number of sign messages and prevent driver message overload.

34. In Section 2B.19 Mandatory Movement Lane Control Signs (R3–5, R3–5a and R3–7) (referenced in the NPA as Section 2B.16), the FHWA proposed adding a new Mandatory Movement Lane Control Sign (R3–5a) under OPTION to explain to road users that they must stay in the same lane and proceed straight through an intersection. Two comments were received that recommended changing the name of this sign to a ''Straight Through Only'' sign, which is a more specific description of the sign's intent. The FHWA agrees and is adopting this change.

Also in Section 2B.19 Mandatory Movement Lane Control Signs, a GUIDANCE statement is added to read: ''Mandatory Movement Lane Control signs should be accompanied by lane control pavement markings, especially where traffic volumes are high, where there is a high percentage of commercial vehicles, or where other distractions exist.'' This was proposed as a requirement in the NPA, which stated that whenever lane use control signs are installed, lane-use pavement markings shall also be installed, and seven commenters objected to this proposal and mentioned that many jurisdictions are successfully using this signing without markings, and that making this condition mandatory may constitute an unfunded mandate creating serious hardships on many jurisdictions. The FHWA agrees with these suggestions, and believes that this language is more appropriately included as an OPTION in Section 2B.19.

35. In Section 2B.30 WRONG WAY Sign (R5–1a), the FWHA proposed to include a reference to Figure 2–5a which shows the signing and pavement marking treatments for divided highway intersections with medians 9 m (30 ft). Based on the negative comments received on the proposed figure, the FHWA has revised the figure to only depict WRONG WAY signing. The figure is renumbered Figure 2B–2, ''Typical Wrong Way Signing for Divided Highways.''

36. In Section 2B.32 ONE WAY Sign (R6–1, R6–2), the FHWA proposed to change the recommendation regarding placement of the One Way signs from a recommendation to a requirement. The FHWA received one negative comment regarding the change from GUIDANCE to STANDARD, stating the rationale that alley traffic is familiar traffic and that the current practice has been proven over time to be adequate. The FHWA disagrees with this comment and is adopting the proposed amendment. Not

all traffic in alleys will always be familiar traffic, and this new requirement will increase safety by reducing the chance of road users inadvertently making wrong-way movements.

Another commenter to this section suggested adding a compliance period to relieve the cost burden on local agencies. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule to minimize any impact on State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life.

37. In Section 2B.35 Design of Parking, Standing, and Stopping Signs, the FHWA inadvertently omitted the proposed text, stating that all street parking signs are to be illuminated or retroreflective. This text is consistent with Section 2A.08 Illumination and Retroreflectivity, which discusses the general provisions and standards for signs. The FHWA believes the language that addresses retroreflectivity and illumination is best discussed as a STANDARD in Section 2B.01 Application of Regulatory Signs. The FHWA is adopting the following text: ''Regulatory signs shall be retroreflective or illuminated to show the same shape or similar color by both day and night, unless specifically stated otherwise in the MUTCD text discussion of a particular sign or group of signs (see Section 1A.08).

38. In Section 2B.37 Emergency Restriction Signs (referenced in the NPA as Section 2B.36, paragraph 3), FHWA is providing States with the choice of either using red or black legend and border on a white background for these signs. The FHWA did not receive any comments opposed to this adopted change.

39. The 1988 MUTCD contained a sentence that the WALK ON LEFT (R9–1) and NO HITCHHIKING (R9–4) signs do not have to be retroreflective. However, the FHWA is changing this and requiring that all signs, including these pedestrian signs, shall be either illuminated or retroreflective. The FHWA did not receive any comments opposed to this adopted change.

40. In Section 2B.40 Traffic Signal Signs, the FHWA proposed adding two new symbol signs for NO RIGHT TURN ON RED (R10–11c) and NO LEFT TURN ON RED (R10–11d). Three commenters disagreed with the use of these symbol signs as alternatives to the word legend R10–11a and R10–11b signs. Their concern was that these new symbol signs may be confused with the R3–1R (NO RIGHT TURN) and the R3–1L (NO LEFT TURN) symbol signs and will lead to increased violations for No Right Turn or No Left Turns situations. The FHWA believes that since the use of the proposed signs is an OPTION and not a requirement, that jurisdictions should be able to have the option of using either word message signs or these new symbol signs. Therefore, the text has been modified to read: ''A symbolic NO TURN ON RED sign (R10–11c) may be used as an alternate to the R10–11a and R10–11b signs.''

41. The FHWA added two new sections to address High Occupancy Vehicle (HOV) signing: Section 2B.49 High Occupancy Vehicle Lanes, and Section 2B.50 High Occupancy Vehicle Sign Applications and Placement. No commenters objected to this amendment.

The FWHA has deleted the R3–18 and R3–19 HOV signs from the text and Table 2B–1. These signs have been replaced by the remaining HOV signs found in Table 2B–1. The FHWA is providing a phase-in compliance period of 6 years after the effective date of the final rule to minimize any potential impact on State and local highway agencies. This period will allow for replacement of the existing signs after the normal service life. Immediate compliance is required for all new installations.

Discussion of Adopted Amendments to Chapter 2C—Warning Signs

The FHWA received 329 comments from 42 commenters concerning Chapter 2C. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999, under docket number FHWA–1999–5704.

42. The following general changes are in Chapter 2C: the various sizes of warning signs are shown in Table 2C–2; and the sections in 2C are grouped and discussed according to category type and application. Table 2C–1 shows the categories, application, appropriate sections, and sign numbers for the warning signs discussed in Chapter 2C. The table is designed so that it is easy to reference this information. The section topics are grouped by roadway-related, traffic-related, and non-vehicle related categories.

43. In Section 2C.02 Application of Warning Signs, paragraph 2 includes language that was proposed in the NPA as Section 2C.35 Motorized Traffic Signs. The language indicating that warning signs should be removed or covered when conditions or activities are seasonal or temporary is more appropriate for inclusion in Section 2C.02 which discusses general application for all warning signs. This language is removed from the section on ''Motorized Traffic Signs.''

In Table 2C–2 Warning Sign Sizes, the minimum sizes of the following signs are increased from 600 mm (24 inches) to 750 mm (30 inches): Merge Sign (W4–1), Narrow Bridge Sign (W5–2), Two-Way Traffic Sign (W6–3), and the Double Arrow Sign (W12–1). This change makes the minimum size consistent with other signs in the respective sign series and improve the sign visibility for road users, particularly older drivers. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for all new installations.

The FHWA received comments from the Washington Department of Transportation (WDOT) and an engineering concerning Table 2C–2. The WDOT suggested that all diamond warning signs in this table should be the same size for a given roadway type facility. The example given was that the Curve Sign (W1 Series) requires more decision and reaction time than the Merge Sign (W4 Series). Therefore, the WDOT suggests that the Curve Sign, when used on expressways and freeways, should be at least the same size as shown for the Merge Sign which is 1200 mm x 1200 mm (48 inches by 48 inches). The FHWA agrees that there is a need to further study this issue of sign size consistency, and we will revisit it as part of a future notice of proposed amendments.

An engineering consultant suggested that the FHWA delete the term ''standard size'' used as a heading in Table 2C–2 because in tort liability cases, the term ''standard size'' is misunderstood and requires explanation. Based on this comment, the FHWA has revised Table 2C–2 to relate the warning sign sizes to the roadway classification using the following headings: Conventional Roads, Expressway, and Freeway. The FHWA has added a supplemental Table 2C–2a to show the minimum and oversized warning sign sizes.

44. In Section 2C.06 Horizontal Alignment Signs, the discussion for each of the horizontal alignment signs (W1–1 through W1–5) are combined into one section. A Table 2C–4 has been added to provide guidance for determining when to use the horizontal alignment signs based on the number of alignment changes and based on whether or not the advisory speed is

greater than, equal to, or less than 50 km/h (30 mph).

45. In Section 2C.07 Combination Horizontal Alignment/Advisory Speed Sign, a new W1–9 sign is added to the MUTCD. The W1–9 sign combines the Turn (W1–1) Sign or the Curve (W1–2) Sign with the Advisory Speed Plaque (W13–1) to create one sign. The FHWA has also included a reference to this sign in Section 2C.06 Horizontal Alignment Signs. In the NPA, the FHWA indicated that the W1–9 sign shall be installed within the turn or curve. However, based on the docket comments from the Illinois DOT, the Ohio DOT, and the Ohio Institute of Transportation Engineers, the FHWA has revised paragraph 2 to indicate that this sign shall be installed at the beginning of the turn or curve to give motorists prior warning before they enter the curve. The FHWA also received a comment from Pierce County, Washington indicating that this sign has potential application in urban or lower speed conditions. The FHWA agrees and has included a minimum size of 900 mm x 900 mm (36 x 36 inches) when this sign is used on low speed facilities.

46. In Section 2C.08 Combination Horizontal Alignment/Intersection Sign, a new W1–10 sign is added to the MUTCD. The W1–10 sign combines the Turn (W1–1) sign or the Curve (W1–2) sign with the Cross Road (W2–1) sign or Side Road (W2–2, W2–3) signs to create one sign. The FHWA has added a reference to this sign in Section 2C.06. The FHWA has deleted the following paragraph which was formerly paragraph 3 in the NPA: ''The Combination Horizontal Alignment/Intersection sign should not be used if there is adequate roadway length to provide for separate signs showing each of the applicable features.'' Based on comments received, the FHWA believes that even when adequate space is available to install separate signs, this combination sign can provide a clearer message to the road user, and the decision to use this sign should be left to the State or local agency's discretion.

47. In Section 2C.10 Chevron Alignment Sign, based on a docket comment that the FHWA received from the Illinois DOT, the FHWA has added an OPTION to install the Chevron Alignment (W1–8) sign on the far side of an intersection to inform road users of a change in horizontal alignment through an intersection.

48. In Section 2C.12 Truck Escape Ramp Signs, a new TRUCK ESCAPE RAMP word message (W7–4c) sign is added to the MUTCD. Since this term is more widely and commonly used, the FHWA has included it as an OPTION to the RUNAWAY TRUCK RAMP word message (W7–4) sign. The FHWA has included GUIDANCE for installing No Parking (R8–3 series) signs near the ramp entrance due to the potential hazard caused by parking at these ramp locations.

49. In Section 2C.13 Road Narrows Sign, an OPTION to use the Advisory Speed (W13–1) plaque with the ROAD NARROWS (W5–1) sign is added.

50. In Section 2C.20 Low Clearance Sign, the use of the Low Clearance (W12–2) sign is required to notify road users of clearances less than 12 inches above the statutory maximum vehicle height or minimum structure height. Providing this critical information is especially important to operators of large vehicles.

51. A new Section 2C.22 Speed Hump Sign and new word message sign (W17–1) is added. The FHWA received a docket comment from the NCUTCD requesting this new word message sign. With the prevalent application of traffic calming techniques within residential communities and the possibility of States developing their own word message signs, the FHWA believes it is appropriate to include a standard word message sign in the MUTCD. In an effort to promote uniformity and discourage a proliferation of States using a variety of signs, the FHWA adopts the SPEED HUMP sign recommended by the NCUTCD. The addition of this new section means that the section numbers for the sections following 2C.22 are changed.

52. In Section 2C.24 Shoulder Signs, language is added to describe the application of the SOFT SHOULDER (W8–4) sign, the LOW SHOULDER (W8–9) sign, the SHOULDER DROP–OFF (W8–9a) sign, and the UNEVEN LANE (W8–11) sign. These word message signs are also appropriate for use in work zones (MUTCD Part 6). Since Part 6 references the signs but does not include a description, the FHWA has included an application discussion for these signs. The symbols for these existing signs have created confusion and misunderstanding. Therefore, the symbol signs are deleted in lieu of word messages. A phase-in compliance period of 10 years from the effective date of this final rule is provided so that State and local agencies can replace their existing symbol signs with word message signs over the course of the normal service life of the signs.

53. In Section 2C.26 Advance Traffic Control Signs (W3 series), all of the Advance Traffic Control signs are combined into one section. The Advance Traffic Control signs include: The Stop Ahead (W3–1a), the Yield Ahead (W3–2a), the Signal Ahead (W3–3), and a new BE PREPARED TO STOP (W3–4) sign. A new word message sign was submitted as a docket comment from the NCUTCD. This word message sign was already adopted in MUTCD Part 6, Work Zones. The MUTCD Part 6 shows the sign but does not have any descriptive text accompanying the sign. The FHWA believes this word message sign is appropriate for inclusion in both Chapter 2C and Part 6 because it advises road users that they may encounter traffic congestion or stopped traffic caused by traffic signals. This amendment includes descriptive text to discuss the application of the BE PREPARED TO STOP sign.

Also in this section, the FHWA received comments from the city of Bellevue, Washington and the Washington DOT indicating that they have installed Street Name plaques with the Advance Traffic Control signs and have had no negative effects. Therefore, in the first OPTION statement of Section 2C.26 the FHWA has modified the sentence to allow the OPTION of installing a supplemental Street Name plaque above or below any Advance Traffic Control sign rather than just the Signal Ahead sign because it gives States more flexibility.

54. In Section 2C.27 Cross Traffic Does Not Stop plaque, a new (W4–4P) plaque is added. This plaque is intended to warn road users that they are approaching a 2-way stop controlled intersection. This new word message plaque is based on research conducted by the Texas Transportation Institute [3] and on recommendations included in the ''Older Driver Highway Design Handbook.'' [4] The FHWA believes it is appropriate from a safety standpoint to add this new warning sign to help road users quickly identify the type of stop controlled intersection. The FHWA did not receive any docket comments opposed to this new plaque. However, the FHWA did receive a comment suggesting that we add the OPTION to use this plaque on 1-way stop controlled T-intersections and the FHWA has included this modification.

The FHWA also received comments from the city of Bellevue, Washington and the Texas DOT questioning the

[3] Picha, D.L., C.E. Schuckel, J.A. Parham, and C.T. Mai, ''Traffic Control Devices at Two-Way Stop Controlled Intersections,'' Research Report 1374–IF, Texas Transportation Institute, College Station, Texas, November 1996.

[4] ''Older Driver Highway Design Handbook,'' Report No. 1 FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

appropriate color of the CROSS TRAFFIC DOES NOT STOP plaque. In response to these comments, and since this plaque is intended as a warning message to provide advance notice of an upcoming situation, language is added that the plaque colors are black legend on a yellow background. In State and local jurisdictions where this plaque is intended to regulate traffic, this plaque may be placed on the same post as the STOP sign. When used with the STOP sign, the colors are black legend on a white background.

55. In Section 2C.30, paragraph 4, a new sentence is added that roadway delineation may also be used to notify road users of lane reduction situations. The OPTION to use pavement markings in addition to the Lane Ends signs will provide additional guidance information to the road users.

Also in paragraph 5 of this section, GUIDANCE is included to indicate that, in situations where an extra lane has been added for slower moving traffic, a Lane Ends sign should be installed in advance of the end of the extra lane.

56. In Section 2C.33 Advisory Exit, Ramp, and Curve Speed Signs, GUIDANCE is added to clarify the difference between when the Exit Speed (W13–2) signs and the Ramp Speed (W13–3) signs should be used. Based on deliberation comments made to the docket review, the FHWA has changed the title of this section and included a new Curve Speed (W13–5) sign. This sign was not discussed in the NPA, but the FHWA believes it should be included in the MUTCD because it provides the advisory speed on roads and highways at the beginning of horizontal alignment changes. The Curve Speed sign is designed exactly like the Exit and Ramp Speed sign.

57. In Section 2C.34 Intersection Warning Signs, an OPTION to install an Advance Street Name (W16–8) plaque in conjunction with the intersection warning signs is provided. This change provides helpful advance information to the road user.

Also in this section, the FHWA has added a new Circular Intersection (W2–6) symbol sign that was submitted by the NCUTCD. The FHWA received comments from the Texas, Missouri, and Oregon DOTs in favor of a different symbol that was similar to the roundabout symbol used in Europe. With the advent of traffic calming practices in residential communities, the FHWA believes it is important to take advantage of this opportunity to include a sign in the MUTCD for circular intersections. Until further research can be done on another symbol, the FHWA plans to include the symbol submitted by the NCUTCD and to include language indicating that the symbol be accompanied by an educational word message plaque.

58. A new Section 2C.36 Motorized Traffic Signs is added. Motorized traffic signs are used to alert road users to unexpected entries into the roadway by trucks, farm vehicles, emergency vehicles, and other vehicles.

Also in this section, a new EMERGENCY SIGNAL AHEAD (W11–12) warning sign for use with the Emergency Vehicle (W11–8) symbol sign is added. These two signs are required in advance of all emergency vehicle traffic control signals (Chapter 4F).

Based on FHWA internal comments made during the docket review deliberations, this section has also been revised to include an OPTION to use other word message warning signs to indicate the type of emergency vehicle station ahead (such as rescue squad, etc.) in situations when no emergency signal is present.

59. In Section 2C.37 Crossing Signs, a new design and application for advance crossing and crossing signs is added. In the past, the crossing signs were distinguished from the advance crossing signs by the use of crosswalk lines on the sign. However, people rarely noticed the difference. The FHWA has changed the design of these signs by deleting the crosswalk lines and using one sign for both the advance and the crossing location. The crossing sign when used to provide advance notice to road users is supplemented with the legend ''AHEAD'' or with an appropriate distance plaque. The crossing sign is used adjacent to crossings and must be supplemented with a diagonal downward pointing arrow when the crossing does not have pavement markings. If pavement markings are used to mark the crosswalk, then only the crossing sign is needed and the diagonal downward pointing arrow is optional. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This change is effective immediately for new sign installations.

Discussion of Adopted Amendments to Chapter 2D—Guides Signs for Conventional Roads

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

60. Throughout Chapter 2D, the FHWA is replacing the word ''marker'' with the word ''sign,'' since these route and auxiliary markers are generally considered signs. The sign numbers, however, will continue to carry the ''M'' designation (example: M1–4) so that the State's sign inventory will not need to change. Also, a reference to Chapter 2A is included to remind readers to check there for placement, location, and other general criteria for signs, since this information is not repeated in every section. There were no docket comments on this section.

61. In Section 2D.03 Color, Retroreflection, and Illumination, the STANDARD statement in paragraph 3 is modified to extend the general requirements for retroreflectivity and/or illumination to ''all'' guide sign messages and legends, unless specific exceptions are provided. This is consistent with Section 2A.08 which requires all signs to be retroreflective and/or illuminated. There were no docket comments on this section.

62. In Section 2D.09 Numbered Highway Systems, a sentence is added to paragraph 5 which states that the highest priority route sign legend shall be placed on top or to the left of the sign panel. This will help the road user better identify the class of roadway (example: Interstate vs. County route). There were no docket comments on this section.

63. In Section 2D.11 Design of Route Signs, paragraph 6 allows the OPTION of placing a white sign panel behind the Off-Interstate Business Route signs when they are installed on a green guide sign. This amendment will improve the sign's contrast and conspicuity. There were no docket comments on this section.

64. In Section 2D.15 Cardinal Direction Auxiliary Sign, the first letter of cardinal direction messages is increased by 10 percent. Increasing the first letter of cardinal direction signs such as EAST and WEST, helps the road user in the navigation task by providing a clearer distinction between the similar appearance of these two messages. This same principle is true for the NORTH and SOUTH cardinal directions. This change was previously adopted in revision number 5 to the 1988 MUTCD and is mentioned here to bring attention to the compliance date which was December 31, 1994. The FHWA received no docket comments on this section.

65. In Section 2D.33 Destination and Distance Signs, the OPTION statement is changed to add the placement of the route sign and cardinal direction within

the destination sign panel. When this option is used, the size of the route sign and cardinal direction auxiliary sign should be at least the minimum size specified for these signs. There were no docket comments on this section.

66. In Section 2D.34 Destination Signs, paragraph 9 recommends that when there are four destinations, they should be shown on two separate sign panels. The FHWA has changed this from a requirement (as shown in the 1988 edition of the MUTCD) to a GUIDANCE in order to allow State and local highway agencies more flexibility. The FHWA believes this change is appropriate since the OPTION in paragraph 10 allows all four destinations on one sign panel in situations where spacing is critical. The FHWA received no docket comments on this section.

67. In the 1988 edition of the MUTCD, distance signs were required to be placed approximately 500 feet outside the municipal limits or at the edge of the built-up district. Section 2D.37 Location of Distance Signs, eliminates this specific distance requirement and allows the State and local highway agencies the flexibility to determine the appropriate sign location. There were no docket comments on this section.

68. The FHWA received comments from the Minnesota Department of Transportation and reviewed the recommendations in the ''Older Driver Highway Design Handbook,'' [5] which suggest that a discussion for installing street name signs on overhead mast arms be included in the MUTCD. Since many State and local highway agencies are already using this application and it does improve sign visibility, the FHWA is adopting this as an OPTION in paragraph 11 of Section 2D.38 Street Name Sign. At intersections having two different street names, the FHWA is also adopting the OPTION to show both street names on one panel with appropriate directional arrows. This is consistent with the ''Older Driver Highway Design Handbook'' and will also optimize sign visibility for the road user.

69. In Section 2D.44 General Service Signs, paragraph 15 is changed to eliminate the term ''opaque background'' since all backgrounds shall be either retroreflective or illuminated as discussed in Section 2D.03. There were no docket comments on this section.

In this same section, an OPTION is added to use the new word message sign ''ROAD CONDITION DIAL 511'' to notify road users of road and traffic conditions. This is a new OPTION that was not included in the NPA because at the time, it had not been approved by the Federal Communications Commission.

70. The title of Section 2D.45 proposed in the NPA is changed from ''Milepost Markers'' to ''Reference Posts.'' This change is based on internal review discussions during the FHWA's deliberation of docket comments. The FHWA has changed the title of this section to ''Reference Posts'' since this is a more accurate description.

The FHWA has also modified this section in paragraph 11 of the OPTION statement to eliminate the provision for placement of the kilometer (mile) fractions on the back of the post or on a separate small plate. The text in the 1988 edition of the MUTCD was written more for road maintenance and public works activities. This modification is being made to help road users better identify their location in emergency situations.

Discussion of Amendments to Chapter 2E—Guide Signs, Expressways and Freeways

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

71. Chapters 2E (Guide Signs—Expressway) and 2F (Guide Signs—Freeways) in the 1988 MUTCD are combined into a new Chapter 2E titled ''Guide Signs—Freeways and Expressways.'' The FHWA did not receive any comments.

72. In Section 2E.05, a STANDARD sentence is added in paragraph 1 to provide that signs which are not illuminated must be retroreflective.

Also in this section, paragraph 4 recommends that all overhead sign installations should be illuminated unless an engineering study shows that retroreflection alone will perform effectively. The FHWA did not receive any comments.

73. In Section 2E.06 Characteristics of Urban Signing, the first paragraph adds item H concerning visual clutter from roadside development to the list of features which characterize urban conditions. Growth in business development and environmental changes make this an appropriate item to consider when installing signs since excessive signs may create information overload for some road users and may complicate the navigation task. The FHWA did not receive any comments.

Also in this section, the second paragraph contains a list of special sign treatments for improving travel on urban freeways and expressways. The FHWA is amending item H to this list as follows: ''Frequent use of street names as the principal message in guide signs.'' This amendment improves the guidance information provided to road users. The FHWA did not receive any comments.

74. In Section 2E.08 Memorial Highway Signing, the GUIDANCE in paragraph 1 is expanded to include all freeways and expressways in the discussion of classes of highways that should not be signed as memorial highways. The FHWA did not receive any comments.

75. In Section 2E.09 Amount of Legend on Guide Signs, paragraph 1 clarifies the previous GUIDANCE in the 1988 MUTCD which addressed the appropriate number of destinations on major guide signs in general. The FHWA is changing the wording to clarify that not more than two destination names or street names should be shown on the following specific signs: Advance Guide signs or Exit Direction signs. The FHWA did not receive any comments.

76. In Section 2E.12 Designation of Destinations, paragraph 4 highlights the fact that AASHTO is responsible for the selection of control cities shown on guide signs.

77. In Section 2E.16 Abbreviations, the second paragraph in GUIDANCE provides for using periods on expressway and freeway signs. It provides that periods should not be used except when a cardinal direction is abbreviated as part of a destination name. The FHWA did not receive any comments.

78. In Section 2E.17 Symbols, paragraph 1 requires that symbol designs be essentially like those shown in the MUTCD and the ''Standard Highway Signs Book.'' [6]

79. In Section 2E.19 Diagrammatic Signs, the FHWA in the NPA proposed as a STANDARD the requirement of showing only one destination for each directional arrowhead on diagrammatic signs. Based on comments to the docket by the Missouri Department of Transportation, the FHWA has decided to recommend rather than require the practice of showing only one destination for each arrowhead on a

[5] Ibid.

[6] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the 2000 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.

diagrammatic sign. The recommended number of destinations is two for each sign. However, the FHWA recognizes that there are some special situations where there are more than two principle destinations at the interchange and changing this sentence to GUIDANCE provides more flexibility to State and local highway agencies.

80. In Section 2E.20 Signing for Interchange Lane Drops, the last sentence in paragraph 1 is added to prohibit the use of the EXIT ONLY panel on diagrammatic signs at any major bifurcation or split. This change is intended to eliminate a potentially confusing situation for road users. The FHWA did not receive any comments.

81. In Section 2E.21 Changeable Message Signs, the FHWA is including GUIDANCE in paragraph 3(a) to indicate that the desirable letter size for changeable message signs is 450 mm (18 inches) or a minimum letter size of 265 mm (10.6 inches). The FHWA is also including additional criteria (as discussed in MUTCD Part 6) for the use of changeable message sign.

82. In Section 2E.24 Lateral Clearance, paragraph 1 adds a discussion on the importance of the clear zone and breakaway supports when determining the horizontal clearance distance for sign installation.

83. In Section 2E.29 Interchange Exit Numbering, paragraph 2 increases the vertical dimension of the exit number panel from 600 mm (24 inches) to 750 mm (30 inches). This change is adopted because it improves the visibility of critical sign information for directing the road users to their destinations. Since the FHWA received comments from North Carolina, Missouri, and Minnesota Departments of Transportation expressing concern regarding the impact of implementing this change for existing installations, the FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations to minimize any potential impact to State and local highway agencies. This period will allow for replacement of existing signs after the normal service life. This change takes effect immediately for all new installations.

Also in this section, the text in the OPTION statement is modified to recommend the use of milepost numbering as the preferred method for interchange exit numbering. Consecutive numbering is optional for those States which are still working towards changing over to milepost numbering. The FHWA received a docket comment from the Ohio Department of Transportation suggesting this change.

Additionally in this section, the FHWA has included an OPTION to add the word ''LEFT'' to the exit number panel. Since left exits are generally fewer and tend to violate expectancy, the FHWA believes that this OPTION will help the road user identify proper lane placement prior to the exit.

84. In Section 2E.31 Advance Guide Signs, the paragraph 2 GUIDANCE statement includes placement of Advance Guide signs in advance of the exit gore. The distance of an Advance Guide sign is changed from ''400m to 1km'' to ''1 to 2 km (½ to 1 mile)'' from the exit gore. This change places the Advance Guide sign back further from the exit gore in order to provide more decision and reaction time to the road user. Although the FHWA did not receive any comments expressing concern with this change, the FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing installations in order to minimize any potential impact to State and local highway agencies. This period will allow for replacement of the existing signs after their normal service life. This change is effective immediately for all new installations.

85. In Section 2E.33 Other Supplemental Guide Signs, paragraph 2 adds GUIDANCE for installing only one supplemental guide sign on each interchange approach. The FHWA did not receive any comments on this section.

86. In Section 2E.34 Exit Direction Signs, paragraph 2 prohibits the use of population figures or other similar information on Exit Direction signs. The FHWA did not receive any comments on this section.

Also in this section, the second GUIDANCE statement deletes the words ''cantilevered support'' and allows the Exit Direction sign to be installed on any overhead support located over the exit lane in advance of a gore point.

The change in the last sentence of Section 2E.34, paragraph 10 is revised from that proposed in the NPA in response to a docket comment from the Minnesota Department of Transportation. Instead of recommending that the Exit Direction sign should be mounted on the face of the overhead structure, the FHWA is changing this to an OPTION to allow more flexibility at those locations that may not have available overhead structures.

87. In Section 2E.41 Signing by Type of Interchange, paragraph 3 provides GUIDANCE that the signing layout should be similar for interchanges which have only one exit ramp in the direction of travel. The FHWA did not receive any comments on this section.

88. In Section 2E.42 Freeway-to-Freeway Interchange, an OPTION is added for installing overhead guide signs at the 1 km (½ mile) and 4 km (2 mile) points. This OPTION is in addition to the required overhead guide signs at the 2 km (1 mile) point and at the theoretical gore of each connecting ramp.

89. In Section 2E.48 Closely-Spaced Interchanges, paragraph 1 is changed from that proposal in the NPA in response to a docket comment from the Minnesota Department of Transportation. Instead of mandating or requiring that the advance guide signs for the next interchange should be mounted on an overhead structure, the FHWA is changing the GUIDANCE to an OPTION in an effort to allow more flexibility at those locations that may not have available overhead structures.

90. In Section 2E.52 General Service Signs, paragraph 2 adds an OPTION that allows an action message, such as NEXT RIGHT, to be placed on general service signs which do not have exit numbers included on the sign. Figure 2E–38 has been added as an example. The FHWA did not receive any comments on this section.

Also in this section, paragraph 4, GUIDANCE is added that recommends the distances to services should be shown on general service signs when the service is more than 2 km (1 mile) from the interchange.

Additionally, paragraph 4a(1), is changed based on comments from the Ohio Department of Transportation and logo organizations in 9 States, which suggested that the FHWA delete tire repair from the list of criteria for selecting and installing general service signs for gas stations. The FHWA is adopting this modification since the majority of businesses offering gas today, no longer provide tire repair services. This same change applies to Section 2F.01, paragraph 8, item 1.

Also in this section, paragraph 4b(4), 4c(4), and 4f(3) are revised to add ''modern sanitary facilities'' as a criteria for food, lodging, and camping services.

Additionally, paragraph 4b(2) modifies the number of days that a food service, selected for general service sign, is open. The 1988 MUTCD showed 7 days per week, and the new edition states at least 6 days per week. This amendment also applies to Section 2F.01, paragraph 9, item D(b). This revision to the MUTCD is made in order to comply with the requirement of Federal law, Public Law 105–178, 112 Stat. 214, which was effective on June

9, 1998. There were no docket comments on this section.

Also in this section, a STANDARD is added which requires that general service signs that are operated on a seasonal basis shall be removed or covered during periods when the service is not available. This amendment reduces the chance of road users mistakenly leaving their routes only to find that the particular service is closed. The FHWA received no comments on this section.

91. In Section 2E.57 Radio Information Signing, paragraph 1 allows State and local highway agencies the OPTION of using a word message Radio-Traffic Information (D12–4) sign in conjunction with traffic management systems. The FHWA received no comments on this section.

Also in this section, paragraph 2 establishes three as the maximum number of frequencies shown on each Radio-Traffic Information sign. The FHWA did not receive any comments on this change.

Discussion of Adopted Amendments to Part 2F—Specific Service Signs

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

92. Since the FHWA has combined chapters 2E and 2F of the 1988 MUTCD into one chapter, the new chapter for Specific Service Signs is Chapter 2F (formerly Chapter 2G in the 1988 MUTCD). There were no docket comments on combining Chapters 2E and 2F.

93. In Section 2F.01 Eligibility, paragraph 4 adopts Title VI of the Civil Rights Act of 1964 as a STANDARD for selecting eligible specific services. This is consistent with the requirements of other Federal programs. The FHWA received no docket comments on this section.

Also in this section, paragraphs 5 and 12 adopt a new specific service sign category for attraction signs. This increases the Specific Service Sign categories to five (gas, food, lodging, camping, and attractions). There were no docket comments on this section.

Additionally, paragraph 7 is changed from that proposal in the NPA as a result of docket comments received from six logo organizations suggesting that the FHWA modify the discussion for Specific Service Sign eligibility to include the following text shown in bold: ''If facilities for the specific service being considered are not available within the 5 km (3 miles) limit or choose not to participate in the program, then the limit of eligibility may be extended in 5 km (3 miles) increments until one or more facilities for the services being considered choose to participate or until 25 km (15 miles) are reached, whichever comes first.'' The FHWA is adopting this modification to give states more flexibility in the selection of eligible specific service facilities

In paragraph 9, item (A)(1), under GUIDANCE, the FHWA adds ''alternative fuels'' to the list of qualification criteria for specific service signs. No comments were received regarding this change.

94. The FHWA received 11 comments from representatives of various State logo organizations requesting that FHWA modify the proposed Section 2F.02 Application, paragraph 2, to allow for up to three types of services to be displayed on a specific service sign (example: gas, food, and lodging). The FHWA is adopting three types of specific services on one sign as the maximum along with the requirement that if three types of services are allowed on one sign, then the logo panels (businesses) shall be limited to two for each type of service. This would allow for a total of six logo panels per sign which is consistent with the STANDARD in Section 2F.04 Number and Size of Logos and Signs. The FHWA believes that this change will give the states more flexibility in the selection of specific service facilities.

Also in this section under the STANDARD statement, paragraph 2 is changed to delete the requirement for a separate sign for each type of specific service at freeway and expressway interchanges.

95. In Section 2F.04 Number and Size of Logos and Signs, the proposed paragraph 2 allowed a maximum of six logo panels for any specific service category shown on a sign. Based on 12 docket comments received from State Departments of Transportation, representatives of various motorist information services, and logo organizations, the FHWA is also amending paragraph 2 to allow a maximum of four logo panels for one of the two service types on the same sign (example: four food logo panels and two lodging logo panels). When four logo panels for one type of service are installed on a sign, the maximum number of logo panels still shall not exceed six. The FHWA believes that this change will give the States more flexibility in the selection of specific service facilities.

Also in this section, the maximum logo panel size for expressway intersections is increased from 900 mm × 600 mm (36 inches × 24 inches) to 1500 mm × 900 mm (60 inches × 36 inches). There were no docket comments on this section.

96. In Section 2F.05 Size of Lettering, Table II–5, ''Letter and Numeral Sizes for Specific Service Signs'' as shown in the 1988 MUTCD is deleted. In the 1988 MUTCD, a category 1 size was included for use on expressways where access to crossroads was provided by at-grade intersections. The FHWA is deleting Table II–5 and the related categories. The FHWA is adopting a minimum height of 250 mm (10 inches) for all letters and numerals on specific service signs on freeways and expressways, and 150 mm (6 inches) for signs on conventional roads and ramps. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This change is effective immediately for new sign installations.

97. In Section 2F.06 Signs at Interchanges, the requirement for a separate Specific Service sign for each type of services is deleted.

Also in this section, paragraph 2 adds GUIDANCE that specific service ramp signs should be spaced at least 30 m (100 feet) from the exit gore sign, from each other, and from the ramp terminal. The FHWA received no docket comments on this section.

98. In Section 2F.07 Single-Exit Interchanges, paragraph 4 adds an OPTION to install the exit number panel on top of specific service signs on the freeway or expressway for the single-exit interchanges. There were no docket comments on this section.

99. In Section 2F.09 Signs at Intersections, paragraph 3 deletes the reference to a specific distance at which logo panels should not be displayed because they are visible from the roadway or highway. The FHWA believes that the State and local highway agencies should determine the acceptable visibility limits. The FHWA did not receive any comments regarding this change.

Also in this section, paragraph 6 adds an OPTION to install the NEXT RIGHT (LEFT) and other directional information below the logos on the specific service signs.

Discussion of Adopted Amendments to Chapter 2G—Tourist-Oriented Directional Signs.

The FHWA received 52 comments from 10 commenters concerning

Chapter 2G. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

100. In Section 2G.01 Purpose and Application, the FHWA is defining the term ''tourist-oriented directional sign.'' The term ''panel'' is also defined in Chapter 1. The FHWA received no comments on the definition.

One commenter suggested defining ''immediate area'' in the first STANDARD or allowing the States to provide a definition in their State policy. The FHWA believes that defining ''immediate area'' is best addressed through State policy (Section 2G.07), and is revising that section to include a definition as an element of the policy.

A State transportation department pointed out that requiring the use of tourist-oriented directional signs in place of specific service signing may conflict with State statutes. To avoid conflict with State statutes, the FHWA believes that this text would be better addressed as GUIDANCE, and is changing the section accordingly. This change gives the needed encouragement without eliminating the flexibility that some agencies might need.

Three State transportation departments suggested uniform placement of tourist-oriented directional signs regardless of whether the facility and its on-premise advertising signs are readily visible or not from the roadway. Additionally, one State transportation department recommended a definition of ''readily visible from the roadway'' be included. The FHWA believes that for positive guidance, tourist-oriented directional signs should be installed regardless of whether or not the facility and/or its on-premise advertising is readily visible from the roadway. The FHWA has deleted this text from the GUIDANCE.

101. In Section 2G.02 Design, the FHWA is including a STANDARD that each tourist-oriented directional panel shall display only one eligible business, service or activity facility. None of the commenters disagreed with this change and the American Traffic Safety Services Association, Inc. commented favorably.

102. In Section 2G.03 Style and Size of Lettering, the National Committee on Uniform Traffic Control Devices (NCUTCD) recommended deleting the text related to the legend on rural roads. The FHWA agrees with this recommendation and removed it from the GUIDANCE. Using smaller letters on ''less important rural roads'' is not helpful to the unfamiliar road user. One commenter suggested that text referencing the ''Standard Alphabets for Highway Signs and Pavement Markings'' [7] be added. The FHWA agrees with this recommendation and is adding it to the STANDARD, since it is the design standard for letters, numerals, and spacing.

103. In Section 2G.04 Arrangement and Size of Signs, the FHWA limits the size of a tourist-oriented directional sign to a maximum of 1.8m (6 ft.). One commenter suggested that the limitation should be on the number of panels on the sign, rather than the physical size of the sign. The FHWA agrees that there should be a limitation on the number of panels as well as the size of the sign. A maximum sign size is specified to prevent visual obstructions.

Also, under the first GUIDANCE in Section 2G.04, it was proposed in the NPA that no more than three panels should be displayed on each sign. One State transportation department objected. The FHWA agrees because this may place an undue burden for sign removal on those jurisdictions with existing signs. Therefore, the FHWA will continue to allow display of four panels per tourist-oriented directional sign.

Several comments were received on the text regarding installation of intersection approach signs. The text in the first GUIDANCE contained conflicting language. The FHWA is revising the first GUIDANCE to allow for a straight ahead approach sign and is clarifying that intersection approach signs for tourist-oriented destinations to the left, right and straight ahead should be installed in advance of the intersection and that no more than four panels should be displayed on each sign. The FHWA is adding other clarifications to the text, based on the comments received, including: (1) Recommending the order in which signs should be installed; for consistency signs should appear in the following order: (a) The left turn sign should be located farthest from the intersection, (b) then the right turn sign, and (c) the straight ahead sign located closest to the intersection; (2) recommending that when there are multiple destinations in the same direction that the panels on the tourist-oriented directional sign should be displayed in order based on the destination's distance from the intersection (the closest destination should appear first); (3) clarifying that the left, right or straight ahead turn panels may be combined on the same sign, but that the straight ahead sign should not be combined with a sign displaying both the left and right turn destinations, and (4) allowing signs for destinations in the straight ahead direction when there are signs for destinations in either the left or right direction.

104. In Section 2G.05 Advance Signs, the first OPTION regarding installation of advance signs in the NPA has been moved to the GUIDANCE statement in Section 2G.07 State Policy, which is a more appropriate location. Also, in Section 2G.05, the FHWA is including GUIDANCE to clarify that in cases where directional word messages such as NEXT RIGHT (LEFT) or AHEAD are appropriate for application, this additional information may be added to the 1.8m (6 ft) maximum sign height. None of the commenters disagreed with this change and the American Traffic Safety Services Association, Inc., commented in support of the change. One State transportation department objected to installation of the directional word messages above the business identification panels. The destinations on tourist-oriented directional signs and where to turn are priority information; therefore, the directional word message action should be shown first. There were several comments requesting sign dimensions be shown on the figures. The dimensions were inadvertently left off the figures in the NPA and the dimensions in the 1988 Manual will be used with the appropriate metric conversions.

105. Section 2G.06 Sign Locations, require that the location of all other traffic control devices shall take precedence over the location of tourist-oriented directional signs, and that tourist-oriented directional signs shall not obstruct the road user's view of other traffic control devices. None of the commenters disagreed with this change.

The NCUTCD and two other commenters objected to the exception, found in Section 2G.06 GUIDANCE, for the location of the straight ahead sign. The FHWA agrees and has deleted the exception. For positive guidance, a straight ahead business should have a sign in advance of the intersection.

Also in this section, one commenter suggested that the location of and distance between signs, for the advance signs was excessive. The FHWA believes that locating advance signs 1 km (½ mi) from the intersection is an appropriate distance, but agrees that the

[7] The ''Standard Alphabets for Highway Signs and Pavement Markings,'' 1977 Edition, is published by the Federal Highway Administration. It may be obtained from the FHWA, Office of Transportation Operations, 400 7th Street, SW, Washington, DC 20590. It is available for inspection and copying at the FHWA headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

spacing between signs is excessive and has reduced the distance to 152 m (500 ft). Since this is a shorter minimum distance than the current MUTCD, this will not have any impact on State or local highway agencies.

One commenter objected to the phrase in the OPTION paragraph. The Executive Order referenced in the comment was revoked by Executive Order 13132 dated August 4, 1999, and effective on November 2, 1999. However, the FHWA is modifying this paragraph by deleting ''but within the right-of-way'' to be consistent with other parts of the Manual which do not reference right-of-way limits for sign placement.

106. In Section 2G.07 State Policy, the FHWA proposed to add the equal opportunity criteria of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241) as a STANDARD condition for destinations to be eligible for tourist-oriented directional signs. One State transportation department and one State chapter of the Institute of Transportation Engineers objected to including civil rights requirements in the Manual, while the American Traffic Safety Services Association, Inc. supported their inclusion. The FHWA disagrees with these objections to include the civil rights requirements. This paragraph was added as a condition for destinations eligible for tourist-oriented directional signs, because most Federal programs require compliance with Title VI regulations. This paragraph is consistent with Chapter 2F Specific Service Signs.

Also in Section 2G.07, the GUIDANCE statement is revised to include a definition of ''immediate area'' for the area to be served. ''Immediate Area'' was used in the first STANDARD of Section 2G.01 Purpose and Application, of the NPA. In order to give the State highway agencies more flexibility, the FHWA believes that the definition is best addressed through State policy.

Discussion of Adopted Amendments to Chapter 2H—Recreational and Cultural Interest Area Signs

The FHWA received 46 comments from eight commenters concerning Chapter 2H. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

As proposed in the NPA, the FHWA is modifying the following recreational and cultural interest signs to improve their visibility and make the sign design less complex: Litter Container (RG–130), Ranger Station (RG–170), Picnic Area (RM–120), Laundry (RA–060), Sleeping Shelter (RA–110) and Interpretative Trail (RL–130).

Also, the FHWA is adopting the following Forest Service symbols [8] and will include them in the ''Standard Highway Signs'' book [9] Motor Home (RM–200), Group Picnicking (RM–220), Group Camping (RM–210), Dog (RG–240), Seaplane (RG–260), Family Restroom (RA–150), Helicopter (RA–160), All-Terrain Vehicle (RL–170), Archer (RL–190), Hang Glider (RL–210), Fishing Pier (RW–160), Hand Launch for Boating (RW–170), Kayak (RW–190), Wind Surf (RW–210) and Chairlift for Skiing (RS–100). The FHWA has only included new or modified symbol signs in the revised manual.

None of the commenters disagreed with the modified or adopted symbols. However, one State transportation department recommended that we mandate that titles be used with the signs. The FHWA disagrees with the need for this clarification because Section 2A.13 permits an education plate to accompany a symbol sign that is not readily recognizable by the public.

107. In Section 2H.01 Scope, use of recreational and cultural interest signs is expanded by providing the OPTION of using these symbols on directional guide signs found on expressways and freeways. The American Traffic Safety Services Association supported the expanded use of these symbols. Two commenters opposed the expanded use of the symbols suggesting the possible overloading of road users with too many signs along freeways, especially in congested areas. The FHWA disagrees because the GUIDANCE in Section 2H.02 encourages agencies to adopt policies for recreational and cultural interest signing, and cautions agencies not to use them where they might be confused with other traffic control signs.

Also, in this section, the STANDARD paragraph has been removed. General signing requirements are covered in Chapter 2A.

108. In Section 2H.02 Application of Recreational and Cultural Interest Signs, one State transportation department recommended removing the text related to nonvehicular events and amenities. The FHWA disagrees with the recommendation because the Manual has jurisdiction over the signing that leads road users to nonvehicular events and amenities such as trails, structures, and facilities.

109. In Section 2H.04 General Design Requirements for Recreational and Cultural Interest Area Symbol Signs, several commenters recommended including examples of the usage and series categories and one State chapter of the Institute of Transportation Engineers opposed the removal of the Category and Usage Chart. The FHWA agrees with this last recommendation. A Category Chart is included. This chart is similar to the Category and Usage Chart included in the 1988 Manual, except the road/type usage information has been removed. It is no longer appropriate to specify usage since the use of the symbols has been expanded to include both conventional roads and expressways and freeways.

Also, in Section 2H.04, the FHWA has removed the SUPPORT paragraph proposed in the NPA. The use of recreational and cultural interest symbol signs is discussed in Section 2H.01.

110. In Section 2H.05 Symbol Sign Sizes, sign information is discussed in paragraph format. The FHWA received no negative comments regarding the removal of Table II–7, ''Sign Sizes.'' The American Traffic Safety Services Association recommended that a minimum size of 750 mm × 750 mm (30 in × 30 in) be used for expressway and freeway installation to ensure legibility and increase comprehension commensurate with today's higher speeds and complexities evidenced on these types of roadways. The FHWA agrees with this recommendation. The recommended expressway/freeway sign size text is contained in GUIDANCE.

111. In Section 2H.06 Use of Educational Plaques, GUIDANCE recommends that, if used, the educational plaque should be the same width as the symbol sign. None of the commenters disagreed with this change.

112. One State transportation department recommended deleting the proposed Section 2H.08 Color Format. The FHWA agrees with this recommendation and has removed Section 2H.08 as referenced in the NPA, because sign design requirements, including color, are addressed in Section 2H.04.

113. In Section 2H.08 Placement of Recreational and Cultural Interest Area Symbol Signs (referenced in the NPA as Section 2H.09), one State transportation department suggested that the exception to the vertical mounting height for

[8] Based on a Memorandum of Understanding between the FHWA and the U.S. Department of Agriculture Forest Service, many of the symbols used by the Forest Service are adopted by reference in the MUTCD. These symbols are referred to as the ''88 Forest Service Symbol Signs.''

[9] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the 2000 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.

symbol signs on low speed, low volume roads is not necessary and may cause some signs to be installed so that they are no longer crashworthy. The FHWA disagrees with the recommendation to eliminate the exception. Chapter 2A of the Manual requires all signs within the clear zone to be mounted at 2.1 m (7 ft) in urban areas, and at 1.5m (5 ft) in rural areas.

114. In Section 2H.09 Destination Guide Signs (referenced in the NPA as Section 2H.10), one State transportation department recommended that both the recreational and cultural interest area symbol signs and destination guide signs be white on brown. The FHWA disagrees with the recommendation. The GUIDANCE lists the order of preference for use of shapes and colors. While rectangular, white on green is listed first, States may use rectangular, white on brown. This provides maximum flexibility to the States.

Also, in this section, one State transportation department recommended deleting the requirement that advance guide signs and exit direction signs have the white on green color combination where there are destinations other than a recreational or cultural interest area. The FHWA disagrees with the recommendation. Guide signs shall be white on green, except white on brown may be used when solely recreational or cultural interest area destinations are shown.

Several commenters recommended removal of the trapezoidal shape. The FHWA is retaining the GUIDANCE that allows use of the trapezoidal shape. However, the FHWA will consider this recommendation in the future after further study.

115. The FHWA received no objections to deleting Sections 2H.10 through 2H.15 of the 1988 Manual, as proposed in the NPA. These sections gave a general description of the categories of recreation and cultural interest symbol signs.

Discussion of Adopted Amendments to Chapter 2I—Emergency Management

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

116. With the renumbering of Part 2, Chapter 2J is changed to Chapter 2I. The FHWA received a recommendation from the National Committee on Uniform Traffic Control Devices to change the title of Chapter 2I from ''Signing for Civil Defense'' to ''Emergency Management Signing.'' The FHWA has adopted this new title and has deleted reference to civil defense because the more prevalent concerns today are from emergency traffic management situations such as natural disasters and chemical warfare threats.

117. In Section 2I.02 Design of Emergency Management Signs, the Civil Defense symbol is deleted from the evacuation route sign. The evacuation route plaque number is changed from CD–1 to EM–1. All of the emergency management sign numbers discussed in Chapter 2I now have the EM prefix.

118. In Section 2I.04 Area Closed Sign, the reference to ''dangerous radiological or biological contamination'' is deleted since the AREA CLOSED sign is not limited to these type areas but can be used for other emergencies such as natural disasters. The AREA CLOSED sign number is EM–2.

119. In Section 2I.05, the title is changed from ''Traffic Regulation Post Sign'' to ''Traffic Control Point Sign.'' The FHWA believes that this is a more appropriate title since these signs are used at checkpoint locations where traffic is stopped and controlled by designated officials.

The sign number for the TRAFFIC CONTROL POINT sign is EM–3.

120. In Section 2I.07, the title is changed to include both a ROAD USE PERMIT REQUIRED FOR THRU TRAFFIC (EM–5) sign or an AREA USE PERMIT REQUIRED FOR THRU TRAFFIC (EM–5a) sign. There may be situations when the area use permit may be the more appropriate signing message. Therefore, the FHWA has included the OPTION to use this message as an alternative.

121. In Section 2I.09, the title is changed to ''Shelter Directional Sign'' which is a more general heading than ''Fallout Shelter Directional Sign.'' The Shelter Directional Signs may carry one of the following legends: EMERGENCY SHELTER, HURRICANE SHELTER, FALLOUT SHELTER, or CHEMICAL SHELTER.

Discussion of Proposed Amendments to Chapter 2A Which Were Not Adopted

122. In Section 2A.03, the FHWA has deleted the OPTION sentence which indicated that traffic engineering judgment or studies may show that signs would be unnecessary at certain locations. By definition, the purpose of engineering judgment and studies is to determine whether or not a sign or other traffic control device is needed.

123. In Section 2A.18, paragraph 1, the FHWA has decided not to adopt the proposal to require the minimum mounting height of 2.1 m (7 feet) for all signs. This decision is based on crash-worthiness research results [10] which did not justify universal application of the increased mounting height. It is also based on docket comments received from 8 county highway agencies which opposed the increased mounting height for all signs. The minimum mounting height will remain at 5 feet for rural areas and 7 feet for urban areas where parking and other obstructions to view may occur. This minimum mounting height does not preclude the installation of signs at higher heights.

Discussion of Not Adopted Amendments to Chapter 2E—Expressway and Freeway Guide Signs

124. In Section 2E.29, paragraph 2, the FHWA has decided not to adopt the amendment to increase the vertical dimension of the exit number sign panel from 600 mm (24 inches) to 750 mm (30 inches). The FHWA received comments from North Carolina, Missouri and Minnesota Departments of Transportation expressing disagreement with the idea of increasing the vertical dimension of the exit number sign panel to 30 inches, particularly in the absence of specific data to indicate that the 24 inch panels are not performing adequately. The FHWA agrees and will revisit as part of a future research study.

Discussion of Not Adopted Amendments to Chapter 2F—Specific Service Signs

The FHWA received 800 comments from 47 commenters concerning Parts 2A, 2D, 2E, 2F, and 2I. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 63 FR 31950 on June 11, 1998.

125. In Section 2F.02, paragraph 4, the FHWA has decided not to limit the use of the ATTRACTION to expressways and freeways since in paragraph 5, the other specific service categories may be used on any class of highway.

Discussion of Adopted Amendments to Part 3—Markings

The FHWA received 352 comments from 40 commenters concerning Part 3 under docket number 96–47 (in mid-1997 this docket was scanned into the U.S. Dockets Facility as FHWA–1997–2295 and may be retrieved

[10] Marzougui, Dhafer; Bedewi, Nabih; Meczkowski, Leonard; and Taylor, Harry W.; ''Sign Support Height Analysis Using Finite Element Simulation.'' Presented at International Journal on Crash Conference, September 6–8, 2000. To be published in the International Journal on Crash.

electronically with this number). Also, the FHWA received 181 comments from 27 commenters in response to docket number 99–6575. The two notices of proposed amendments (NPA) were published at 62 FR 691 on January 6, 1997, and at 64 FR 73612 on December 30, 1999. Only the technical (not editorial) comments are addressed in this discussion.

126. Chapter A, General Principles, of the 1988 MUTCD is renamed ''General.'' Several sections within this chapter are more appropriately relocated to Chapter B as follows: (a) Section 3A.08 is moved to 3B.08 Extensions Through Intersections or Interchanges, (b) Section 3A.09 is moved to 3B.15 Transverse Markings, and (c) Section 3A.10 is moved to Section 3B.07 Warrants for Use of Edge Lines. Section 3A.07 of the 1988 MUTCD discussed the different types of yellow and white lines. This discussion was reorganized and moved to Section 3B. Each type of line in Section 3A.07 is now discussed in the first six sections of Section 3B, which is organized by color of longitudinal lines.

127. In Section 3A.06 Widths and Patterns of Longitudinal Line Markings, the FHWA is adding to the OPTION statement a recommended ratio for line segments and gaps for ''dotted lines.'' One comment was received from a State highway agency recommending that a definition be provided for the wording ''or longer gaps.'' Since the proposed text did not contain any guidance on the maximum spacing of the longer gaps, the FHWA is including an OPTION statement recommending a maximum ratio of 1:3 for line segments and gaps, respectively, for dotted lines.

128. The section headings on Chapter B, Pavement and Curb Markings, are renamed and reorganized to read as follows:

3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants
3B.02 No-Passing zone Markings
3B.03 Other Yellow Longitudinal Pavement Markings
3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants
3B.05 Other White Longitudinal Pavement Markings
3B.06 Edge Line Markings
3B.07 Warrants for Use of Edge Lines
3B.08 Extensions Through Intersections or Interchanges
3B.09 Lane Reductions Transition Markings
3B.10 Approach Markings for Obstructions
3B.11 Raised Pavement Markers
3B.12 Raised Pavement Markers as Vehicle Positioning Guides with Other Longitudinal Markings
3B.13 Raised Pavement Markers Supplementing Other Markings
3B.14 Raised Pavement Markers Substituting for Pavement Markings
3B.15 Transverse Markings
3B.16 Stop and Yield Lines
3B.17 Crosswalk Markings
3B.18 Parking Space Markings
3B.19 Pavement Word and Symbol Markings
3B.20 Speed Measurement Markings
3B.21 Curb Markings
3B.22 Preferential Lane Word and Symbol Markings
3B.23 Preferential Lane Longitudinal Markings for Motorized Vehicles
3B.24 Markings for Roundabouts
3B.25 Markings for Other Circular Intersections
3B.26 Speed Hump Markings
3B.27 Advance Speed Hump Markings

129. Sections 3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants, 3B.02 No-Passing Zone Markings, and 3B.03 Other Yellow Longitudinal Pavement Markings (all referenced in the NPA as Section 3B.01); Section 3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants, and Section 3B.05 Other White Longitudinal Pavement Markings (both referenced in the NPA as 3B.02); and 3B.06 Edge Line Markings, and 3B.07 Warrants for Use of Edge Lines (both referenced in the NPA as Section 3B.03), are modified to include the provisions of the amendments on standards for center line and edge line markings published as a Final Rule at 65 FR 9 on January 3, 2000. There were 96 commenters on the proposed amendments to include the center line and edge line Final Rule into the proposed Section 3B.01 and 3B.03. Sixty-one commenters opposed the proposed text, and 45 of these commenters suggested two technical corrections. Most of the comments opposed to the proposed text were concerned about the warrants for center line and edge line markings which required edge lines on rural roads before center lines. The FHWA agreed with the comments and changed the text to make the warrants for rural center line and edge line markings consistent. Many commenters suggested a technical correction concerning the ADT values in the proposed warrants. The discussion in the final amendments of January 3, 2000 on center line and edge line markings (65 FR 9, January 3, 2000) stated that ''The FHWA believes that jurisdictions should be aware of the average daily traffic (ADT) volumes and widths of the major roadways now specified in the standards and that the ADTs are an estimate that can be performed at a jurisdiction's judgment.'' The FHWA agrees with the commenters and included a SUPPORT statement ''If a traffic count is not available, the ADTs described in this section can be estimates that are based on engineering judgment.'' Many comments included suggestions that were addressed in the final rule published on January 3, 2000. Many commenters also suggested revisions lowering the STANDARDS, which cannot be accepted because it would adversely impact safety to the traveling public.

As noted in the final amendments for center line and edge line pavement markings, dated January 3, 2000, the compliance date for these sections is January 3, 2003 or when pavement lane markings are replaced within an established pavement marking program, or when the highway is resurfaced or reconstructed, whichever date is earlier.

130. Section 3B.01 Yellow Longitudinal Line and Left Edge Line Pavement Markings and Warrants, now contains GUIDANCE on the speed definition in the warrants for no-passing zones at curves which was in the 1988 MUTCD in Section 3B.05. The text in the NPA for these warrants reduced the minimum passing sight distances because it was based on posted or statutory speed limits as shown in Table 3B–1. In the 1988 MUTCD, the minimum passing sight distances were determined based on the greater of the off-peak 85th percentile speed or the posted speed limits. The FHWA received eight comments that opposed deleting the use of the 85th percentile speed because using the 85th percentile improves safety. Accordingly, the FHWA is returning to the use of the 85th percentile speed because it agrees that this improves safety.

131. In Section 3B.02 No-Passing Zone Pavement Markings and Warrants, the FHWA is changing the first paragraph of the first OPTION to be consistent with Section 8B.16 Pavement Markings, the STANDARD for highway-rail grade crossings. The STANDARD will read: ''No-passing zone markings shall be used on approaches to highway-rail grade crossings in conformance with Section 8B.16 Pavement Markings.'' The second paragraph of the first OPTION will remain an OPTION and will read: ''No-passing zone markings may also be used at other locations where the prohibition of passing is appropriate.''

132. In Section 3B.04 White Longitudinal Line and Right Edge Line Markings and Warrants, and Section 3B.05 Other White Longitudinal

Pavement Markings (referenced in the NPA as 3B.02 White Longitudinal Line Markings), 11 commenters had concerns about specific wording in the text or details about the figures as proposed and suggested technical or editorial revisions to make them acceptable. Of these suggested revisions, five concerned lane lines within a crosswalk. The FHWA agrees with these comments and the lines are removed from within the crosswalks.

After the NPA was published at 62 FR 691 on January 6, 1997, the FHWA noted that text requiring lane line markings was inadvertently omitted from the proposed amendment and was included in the updated text published 64 FR 73612 on December 30, 1999. One comment, received in response to the second NPA, noted that the standard for lane lines on Interstate highways was omitted from the proposed text and that it should be reinserted. The FHWA agrees and is including this STANDARD in the final text.

133. The FHWA is revising the STANDARD for the extension of dotted lines through intersections in Section 3B.08 Extensions Through Intersections (referenced in the NPA as 3B.04 Extensions Through Intersections or Interchanges). One commenter was opposed to the color being the color of the line extended, rather than the color of the line to which it is extended. One commenter was opposed to the width of the marking being the same as the line it extends. The FHWA believes that the proposed text is appropriate because it will provide the most consistent application of dotted line extensions. The FHWA will retain the proposed text in the final version.

Also in this section, paragraph 2, the FHWA added Figure 3B–11, sheet 2 of 2, Typical Pavement Marking Applications (referenced in the NPA as Figure 3–9a, Typical Pavement Marking Applications), to show more examples of the use of dotted line markings in intersections. This figure was in response to older driver research that shows that motorists benefit by having these additional markings. The FHWA received nine, mostly editorial, comments. Two commenters suggested reducing the GUIDANCE to an OPTION which would reduce safety. One commenter suggested adding curvature of the roadway to the list of examples where line extensions should be considered. The FHWA agrees to include ''* * * on curved roadways * * *'' into the final text.

134. In Section 3B.13 Raised Pavement Markers Supplementing Other Markings, and 3B.14 Raised Pavement Markers Substituting for Pavement Markings (both referenced in the NPA as 3B.07 Raised Pavement Markers, Retroreflective and Non-Retroreflective), the FHWA received 21 comments about raised pavement markers. Two comments, from northern States, opposed the minimum height of the raised pavement marker. Since the height definition is SUPPORT and not a STANDARD or GUIDANCE, the proposed text is retained. Seven of the comments proposed technical changes to the spacing of the raised pavement markers. Since the space of raised pavement markers is GUIDANCE, the proposed text will be retained until research indicates that different spacing would provide better information to road users. The FHWA received no comments, however, about the color of raised pavement markers conforming to the color of the pavement marking where they are placed. The FHWA received five comments about the use of raised pavement markers at right edge lines. Two comments addressed the use of raised pavement markers in construction work zones. One comment recommended that raised pavement markers be permitted, and another opposed the use of raised pavement markers on right edge lines. Several commenters agreed that raised pavement markers should not be used on right edge lines. Since there is not a consensus on using raised pavement markers on right edge lines at this time, the FHWA is retaining the proposed GUIDANCE that raised pavement parkers should not supplement right edge line markings.

135. In Section 3B.16 Stop and Yield Lines (referenced in the NPA as Section 3B.09), paragraphs 2, 4, and 6, the FHWA is adding an optional ''Yield Line'' marking for use where it is important to indicate the point behind which vehicles are required to yield. Figure 3–24, Typical Yield Line Layout, provides an illustration of these markings. The FHWA received ten comments. Five of the comments opposed the proposal and indicated that the proposed markings were not needed. The FHWA believes that improved public awareness of yield line markings will lead to consistency in the use of the stop line marking for mandatory stops and the yield line when a yield is the appropriate action. Since these markings would be optional, State and local highway agencies would not be required to use them.

Also in this section, the FHWA received one comment which suggested that the wording of the following phrase be clarified as follows: ''Where through lanes *of traffic approaching an intersection* become the mandatory turn lanes.'' The FHWA is incorporating the above underlined words into the final text to clarify the sentence. The FHWA received two comments suggesting reductions to the use of blue markings to designate parking spaces for persons with disabilities. The FHWA believes the suggestions would reduce the visibility of the markings and is adopting the text as proposed in the NPA.

136. In Section 3B.19 Pavement Word and Symbol Markings (referenced in the NPA as Section 3B.12), third OPTION, paragraph 5, the FHWA is adding a ''Yield Ahead'' triangle symbol marking for optional use in advance of intersections where approaching traffic will encounter a YIELD sign. Figure 3B–24 provides an illustration of these markings. The FHWA received 14 comments, of which only four opposed the proposal. Three comments addressed text and figures that had not changed from the 1988 MUTCD and that will be retained. Only one comment opposed the proposed yield ahead markings. The FHWA is adopting the yield ahead marking as proposed in the NPA.

Also in Section 3B.19 Pavement Word and Symbol Markings, second SUPPORT, the second paragraph states: ''Where crossroad channelization of ramp geometry do not make wrong-way movements physically difficult, guidance to a potential wrong-way road user can be provided by placing a lane-use arrow * * *.'' The FHWA is changing this SUPPORT to GUIDANCE to be consistent with the GUIDANCE, paragraph B, in Part 2E.50 Wrong-Way Traffic Control at Interchange Ramps which states ''Where crossroad channelization or ramp geometrics do not make wrong-way movements difficult, a lane-use arrow should be placed in each lane * * *.''

137. In Section 3B.22 Preferential Lane Word and Symbol Markings (referenced in the NPA as Section 3B.13), the FHWA is differentiating between types of preferential lanes. The diamond pavement marking symbol is for exclusive HOV lane use. In situations where a preferential lane is not an HOV lane, then the word message (Bus, Taxi, etc.) or symbol (Bike, etc.) for the type of traffic allowed would be used. The FHWA received three comments that suggested editorial changes to this section, and it has made one minor editorial change to the second STANDARD, paragraph 2, to include a reference to Figure 3B–25.

138. In Section 3B.21 Curb Markings (referenced in the NPA as 3B.15), paragraph 5, the FHWA is adding paved median noses to the locations that

should have retroreflective solid yellow markings. This addition is made in response to recommendations for older drivers [11], which shows the benefits of having these additional markings. The FHWA received two comments which suggested that the text be changed to an OPTION, and one technical comment that suggested that additional guidance be included on the placement of the markings. The FHWA is adopting the text as proposed in the NPA because the FHWA believes that retroreflective markings should be placed to increase the visibility of paved median noses. The FHWA also believes that the portion of the paved median nose that should be marked should be left to each jurisdiction's judgment.

139. In Section 3B.23 Preferential Lane Longitudinal Markings for Motorized Vehicle (referenced in the NPA as Section 3B.16), is added to provide the STANDARDS for longitudinal lane line markings for physically and non-physically separated, reversible and non-reversible, and left and right side concurrent flow preferential lanes for motorized vehicles. Table 3B–2 was added to list the standards in a tabular format. Figure 3B–25 provides an illustration of these markings.

Furthermore, GUIDANCE is added on marking the neutral area between a preferential use lane and a regular traffic lane, when the distance between them is greater than 1.2 m (4 ft). The FHWA received eight comments concerning this section. Several comments were about showing a double yellow centerline on the figures. The FHWA believes that since the figures clearly show that there is a median, the use of a double yellow centerline is not appropriate. One commenter suggested using a double white dashed line for the right lane line on concurrent flow HOV lanes. Another commenter suggested that the double wide white longitudinal lines should be double normal white longitudinal lines. The FHWA believes that the longitudinal lines shown in the proposed figures provide reasonable options which will promote uniformity of markings to the road users. The FHWA is retaining the proposed figures in the final version.

140. Section 3B.24 Markings for Roundabouts (referenced in the NPA as Section 3B.17), Figure 3B–26 (referenced in the NPA as Figure 3–26), Typical Markings for Roundabouts with One Lane, and Figure 3B–27, Typical Markings for Roundabouts with Two Lanes, (referenced in the NPA as Figure 3–27), are added to incorporate standard markings for roundabouts to the MUTCD. The FHWA disagrees with one commenter opposed to this section which suggested a reduction from GUIDANCE to OPTION. The FHWA did receive 14 editorial comments on the text and figures and they are incorporated as minor modifications to the text.

141. Section 3B.25 Markings for Other Circular Intersections (referenced in the NPA as Section 3B.18), is added to incorporate optional standard markings for other circular intersections including rotaries, traffic circles, and residential traffic calming designs. Figures 3B–26, Typical Markings for Roundabouts with One Lane, and 3B–27, Typical Markings for Roundabouts with Two Lanes, provides illustrations of typical markings for other circular intersections. The FHWA received one comment about the placement of the crosswalk in advance of the yield line in the figures. The FHWA believes that the location of the crosswalk in advance of the yield lines as shown in the figures provides the shortest and safest location for pedestrians to walk. The FHWA will retain the proposed figures in the final version.

142. Section 3B.26 Speed Hump Markings (referenced in the NPA as Section 3B.19), is added to provide pavement markings to assist motorists in identifying the locations of speed humps. Figures 3B–28, Pavement Markings for Speed Humps, and 3B–29, Pavement Markings for Speed Humps, provide illustrations of typical speed hump markings. The FHWA received 11 comments, none of which opposed having speed hump markings. Most, however, were concerned that the markings were excessive and would be difficult to maintain. The FHWA is retaining the text and figures because these markings are optional and the FHWA is not convinced that the alternate markings are better.

143. Section 3B.27 Advance Speed Hump Markings (referenced in the NPA as 3B.20), is added to provide pavement markings to assist motorists in identifying the locations of speed humps. Figure 3B–30, Advance Warning Markings for Speed Humps, provides an illustration of typical advance warning markings for speed humps. The FHWA received four comments. One commenter stated that the advance warning for speed hump markings should not be used because they are similar in appearance to stop lines. The FHWA disagrees with the commenter, because the advance warning markings are a series of transverse bars located in advance of a speed hump, which would not be found at an intersection where a stop bar is located.

144. In Section 3F.02 Channelizing Devices, the FHWA received seven comments on a new STANDARD that states that the color of cones and tube markers used outside construction and maintenance areas shall be the same as the pavement markings. Three comments had concerns about allowing orange as the color of a tubular marker on a white or yellow lane line. One commenter wanted the STANDARD to be more restrictive by excluding orange as a substitute color. Another commenter called the STANDARD difficult to achieve and enforce in practice. The third commenter suggested orange as the predominant color, with permanently mounted tubular markers to be only white. The FHWA will adopt the proposed wording because orange is a universal color for cones and tubular markers. While it is preferable that the color of cones in non-work zones match the color of line that they supplement or are substituted for, the FHWA believes motorists will understand if orange cones or tubular markers are used.

Discussion of Adopted Amendments to Part 4—Highway Traffic Signals

The FHWA received 842 comments from 135 commenters concerning Part 4. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 62 FR 691 on January 6, 1997, and 64 FR 73612 on December 30, 1999.

145. For Section 4A.02 Definitions Relating to Highway Traffic Signals, the FHWA reviewed the text of Part 4 to ensure all terms that need to be explained are defined in this section and that all terms in the definitions are used in the text. Based on this review, the FHWA is adding new definitions for the terms ''signal housing'' and ''walk interval'' because these terms are used in the text of Part 4, but were never defined. The definition for ''signal installation'' is removed because it is no longer used in the text. This section is significantly expanded from four definitions to seventy-one definitions that are being used throughout Part 4.

146. In Section 4C.01 through 4C.09 concerning warrants, the number of warrants are increased from seven, as noted in the 1997 NPA, to eight (The School Crossing Warrant, which was moved to Section 7D.04 in the 1997 NPA, is being moved back to Chapter 4C to keep all the signal warrants together, eliminating the need for the reader to

[11] ''Older Driver Highway Design Handbook,'' Report No. 1 FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

use two parts of the MUTCD. See 62 FR 693). The FHWA did not receive any comments opposed to moving the school crossing warrant from Part 7 back to Part 4.

147. The FHWA inadvertently omitted Section 4C.06 Warrant 5, School Crossing, from the previous NPAs. Section 4C.06 is essentially the same as the 1988 version, with some minor exceptions. The exceptions are:

(1) A new SUPPORT paragraph explaining that the School Crossing Warrant is to be applied in instances where school children crossing the street is the principal reason to consider installing a traffic signal. The FHWA is deleting this paragraph from Warrant 4, Pedestrian Volume, and moving it to Section 4C.06.

(2) To be more consistent with the other STANDARD wording used in the MUTCD, the statement concerning the need for a traffic control signal is changed from ''may be warranted when * * *'' to ''shall be considered when * * *.''

(3) To match the other chapters in Part 4, the FHWA is adding a new STANDARD paragraph which will indicate that, before deciding to install a traffic control signal, ''consideration shall be given to implementation of other remedial measures.''

(4) To match Warrant 4, Pedestrian Volume, a new STANDARD paragraph is added to Warrant 5 which will state that the School Crossing warrant shall not be applied within 300 feet of another traffic signal, unless the proposed signal will not restrict the progressive movement of traffic.

(5) Due to a desire to assist in the reduction of traffic congestion, a new GUIDANCE paragraph is added that states, ''If installed within a signal system, the traffic control signal should be coordinated.''

(6) The use of pedestrian detectors is changed from an OPTION to a GUIDANCE to match Warrant 4, Pedestrian Volume. The GUIDANCE now reads, ''At an intersection, the traffic control signal should be traffic-actuated and should include pedestrian detectors.''

(7) The FHWA is deleting the sentence from the 1988 MUTCD which reads, ''Special police supervision and/or enforcement should be provided for a new non-intersection installation'' because the effectiveness of this depends on the local traffic characteristics and should be determined by local engineering judgment.

148. In Section 4D.04 Meaning of Vehicular Signal Indications, the FHWA is retaining the phrase ''Unless otherwise determined by law'' in the first paragraph under STANDARD. Two comments were received, both in opposition to the proposal to delete this phrase in the January 1997 NPA on the basis that the proposed deletion would infringe on the States' rights to have additional or different meaning of signal indications. The FHWA withdrew this proposal in the December 1999 NPA and put the phrase back in this section. The FHWA encourages States and local entities to achieve uniform rules of the road that are in accord with chapter 11, Rules of the Road, in the ''Uniform Vehicle Code (UVC) and Model Traffic Ordinance,'' 1992, published by the National Committee on Uniform Traffic Laws and Ordinances, Alexandria, Virginia.[12]

149. In Sections 4D.04, 4D.05, 4D.06, 4D.07, 4D.08, 4D.11, and 4D.16, the text concerned with the use of red arrows is being retained in the MUTCD. In the 1999 NPA, it was suggested that this text be removed for reasons of motorist confusion as to the meaning of the red arrow indication. Comments were received from 8 States, 21 cities, 6 counties, 8 consultants, the National Committee on Uniform Traffic Control Devices (NCUTCD), and 9 others that objected to the removal of the red arrow from the MUTCD. Most of the comments pointed out that the red arrow has now been in widespread use for many years, and drivers, including older drivers, understand its meaning and are using it safely. It was pointed out that the research summarized in the ''Older Driver Highway Design Handbook'' [13] was conducted shortly after the red arrow was introduced; therefore, the education of the motoring public, especially older drivers, was still underway. Most of the comments also pointed out that significant funds would need to be spent to convert to circular red displays for protected only mode left-turn phases, including adding LEFT TURN SIGNAL signs on span wires and mast arms, some of which might not be able to handle the additional load. No comments supporting the removal of red arrows were received. The FHWA agrees with these comments and has decided to retain the text concerned with the use of red arrows in the MUTCD.

150. In Section 4D.05 Application of Steady Signal Indications, three commenters questioned the accuracy of item d(3) of the NPA that states a YELLOW ARROW can be terminated by a CIRCULAR YELLOW. The FHWA agrees that this statement is inaccurate and is removing the phrase, ''a CIRCULAR YELLOW indication or'' from this section. Also, the revised text is now part of item E4 of this section.

151. In Section 4D.06 Application of Steady Signal Indications For Left Turns, the 1999 NPA proposed to add a new STANDARD statement and a new OPTION statement in an attempt to favor the leading protected only mode left-turn phases over the other types of left-turn phasing based on the ''Older Driver Highway Design Handbook.'' Comments were received from ten cities, one county, the NCUTCD, and three others that objected to the inclusion of these paragraphs in the MUTCD. Most of the comments mentioned that the decision as to the type of left-turn phasing to use should be made on a case-by-case basis and that a proliferation of leading protected only mode left-turn phases would not be in the interest of anyone, including older drivers. Because there are many legitimate uses for both protected/permissive and lagging left-turn phases, the FHWA is replacing these two paragraphs with an OPTION paragraph regarding special consideration for older drivers in the design of left-turn phasing.

Also in this section, four cities asked that clarifying text allowing the use of ''Dallas phasing'' be added in compliance with the1993 interpretation request by the Texas Department of Transportation. ''Dallas phasing'' provides for a protected/permissive (five section) signal to display a circular green for the left turn approach while the through movement approach signal displays a circular red. The FHWA interpreted the MUTCD ''to permit ''Dallas phasing'' if the five section display for the left turn is shielded, hooded, louvered, positioned or designed so that the left turn signal displays are not seen by the through movement driver.'' Based on these requests, the FHWA is adding a second means of providing protected/permissive mode left-turn phasing. This second means involves an exclusive left-turn signal face instead of a shared left-turn signal face. Therefore, ''Dallas phasing'' is allowed in both of the above described situations.

152. In Section 4D.12 Flashing Operation of Traffic Control Signals, the FHWA received one comment that additional information needs to be added to clarify the procedures for changing from flashing to steady mode. The FHWA is adding language to this

[12] National Committee on Uniform Traffic Laws and Ordinances, 107 S. West St, #110, Alexandria, VA 22314.

[13] ''Older Driver Highway Design Handbook,'' Report No. 1 FHWA–RD–97–135, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

section describing the process of changing from either a yellow-red or a red-red flashing mode to a steady mode. This additional language is needed to ensure a safe transition from a flashing to a steady (stop-and-go) operation.

Another commenter stated that a new GUIDANCE paragraph needs to be added to Section 4D.12 to recommend that, for any steady red clearance interval provided during the change from red-red flashing mode to steady (stop-and-go) mode, the minimum duration should be 6 seconds. The FHWA agrees and is adding a new GUIDANCE paragraph to this section.

153. In Section 4D.13 Preemption and Priority Control of Traffic Control Signals, one comment was received that revisions need to be made regarding the shortening or omission of pedestrian intervals in priority control sequences. The FHWA is adding text to this section's STANDARD paragraph to clarify that pedestrian intervals may be omitted if the entire vehicular phase is also omitted.

154. In Section 4D.15, the FHWA is changing the title from ''Number and Location of Signal Faces by Approach'' to ''Size, Number, and Location of Signal Faces by Approach.'' This was done based one comment suggesting the information on the size of signal faces is more appropriately contained in this section than as shown in Section 4D.16 Number and Arrangement of Sections in Signal Faces, in the 1999 NPA.

Also in Section 4D.15, a new paragraph D is added to the first GUIDANCE statement listing a fourth recommended reason to use 12 inch signals. This new GUIDANCE is to use 12 inch signals at locations where there is a significant percentage of elderly drivers. Comments received from two States, two cities, the NCUTCD, and one consultant objected to the inclusion of this paragraph in the SUPPORT statement of Section 4D.16 as proposed in the 1999 NPA. Most of the commenters stated that the STANDARDS and GUIDANCE found elsewhere in Chapter 4D adequately address the decision as to which size lenses to use. The FHWA decided the new paragraph D was a more appropriate location for this information.

155. In Section 4D.16, the FHWA is changing the title from ''Number and Arrangement of Sections in Signal Faces'' to ''Number and Arrangement of Signal Sections in Vehicular Traffic Control Signal Faces.'' This was done based on a comment suggesting the need to clarify that this section deals only with vehicular traffic control signals. This allows items a, c, and d to be deleted from the proposed STANDARD paragraph since they are not vehicular traffic control signals.

156. In Section 4D.17 Visibility, Shielding, and Positioning of Signal Faces, the FHWA has removed the first sentence of the last SUPPORT paragraph listed in the 1999 NPA. Comments received from three States, three cities, the NCUTCD, and two consultants objected to the inclusion of this sentence describing the size of the backplates in the MUTCD. Most of the comments noted that the use of backplates three times the diameter of the signal would cause infrastructure problems because of inordinate size; a backplate of that size is not needed.

Also in this section and in response to a comment, proposed paragraph 3 in the 1999 NPA under the STANDARD statement, and proposed paragraph 5 in the 1999 NPA under the GUIDANCE statement, are removed because it is not appropriate to aim signal heads in a direction that does not serve drivers at the stop line. Most agencies provide an additional signal face if one is needed to attract the attention of drivers approaching a signal on a curved approach. The FHWA is also adding an OPTION to address the possibility of providing an additional head on the approach.

In response to another comment, the FHWA is adding a GUIDANCE paragraph to Section 4D.17 about the preferability of using visors instead of louvers. The FHWA is adding this paragraph since visors are preferred because they do not diminish light output.

157. In Section 4D.20 Temporary Traffic Control Signals (referenced in the NPA as Section 4D.19), the FHWA is revising the text to remove references to portable traffic control signals (except for the definition of a portable traffic control signal) because a portable traffic control signal is a temporary traffic control signal that is easily moved. Also, the STANDARDS, GUIDANCE, and SUPPORT in this section deal with both portable and temporary. The FHWA is changing the definition of a portable traffic control signal to, ''A portable traffic control signal shall be defined as a temporary traffic control signal that is designed so that is can be easily transported and reused at different locations.''

158. The FHWA is adding two new sections, 4E.06 Accessible Pedestrian Signals and 4E.08 Accessible Pedestrian Signal Detectors, to provide GUIDANCE and STANDARDS for accessible pedestrian signals and accessible pedestrian signal detectors. Text related to accessible pedestrian signals has also been added in various other sections, such as Sections 4C.01 and 4D.03. This was done in response to numerous comments that were received, including 65 comments from the U.S. Architectural and Transportation Compliance Board and 16 comments from The Environmental Access Committee of Division Nine of the Association for Education and Rehabilitation of the Blind and Visually Impaired. The FHWA is providing a phase-in compliance period of 4 years after the effective date of this final rule for existing installations of accessible pedestrian signals and accessible pedestrian signal detectors to minimize any impact on State and local highway agencies. This change is effective immediately for new installations.

159. In Section 4E.06 Accessible Pedestrian Signals, based on a comment received, the FHWA is adding a phrase to the third STANDARD statement that requires the walk tone to have a faster repetition rate only if the walk tone is similar to the tone for the pushbutton locator tone.

160. In Section 4E.07 Pedestrian Detectors, the FHWA is changing the title proposed in the 1999 NPA as ''Pedestrian Signal Timing'' to ''Pedestrian Detectors,'' because the new title accurately reflects information contained in this section. The FHWA is also including a paragraph 8, GUIDANCE, and a paragraph 10, STANDARD, that are part of the 1988 MUTCD, but were inadvertently left out of the NPAs. The GUIDANCE paragraph reads, ''If used, special purpose pushbuttons (to be operated only by authorized persons) should include a housing capable of being locked to prevent access by the general public.'' The STANDARD paragraph reads, ''If used, a pilot light or other means of indication installed with a pedestrian pushbutton shall not be illuminated until actuation. Once it is actuated, it shall remain illuminated until the pedestrian's green or WALKING PERSON (symbolizing WALK) signal indication is displayed.''

161. In Section 4E.08 Accessible Pedestrian Signal Detectors, a new OPTION paragraph is added that allows the use of pushbutton locator tones with accessible pedestrian signals. This is being added to clarify the rest of the text in Section 4E.08.

Also, based on a comment, the FHWA is adding a new phrase to the second STANDARD statement to read, ''When used, pushbutton locator tones shall be easily locatable, shall have a duration of 0.15 seconds or less, and shall repeat at one-second intervals.''

162. In Section 4E.09 Pedestrian Intervals and Signal Phases, two commenters objected to the change in the duration of the pedestrian clearance time being calculated to the far side of the traveled way. The 1988 MUTCD text states the duration of the pedestrian clearance time should be calculated to the center of the farthest traveled lane. The proposed change would have added time to flashing DON'T WALK intervals and would have forced many agencies to retime their traffic signal systems. This would place an undue burden on many local and State jurisdictions. The FHWA agrees with the two commenters and is reverting to the 1988 MUTCD text that refers to the center of the farthest traveled lane.

Also in this section another commenter stated that a change to the second paragraph in the STANDARD statement is needed to make the sentence accurate. It is only the first portion of the pedestrian clearance time that is comprised of the flashing DON'T WALK interval. The FHWA is revising the text to make it clear that the yellow and red intervals can also be included in the pedestrian clearance time.

163. In Section 4F.02 Design of Emergency-Vehicle Traffic Control Signals, the FHWA has changed paragraph 5 from GUIDANCE to STANDARD to be consistent with the STANDARD statement in Section 2B.40 Traffic Signal Signs. The STANDARD in Section 2B.40 states that the R10–13 sign, bearing the legend EMERGENCY SIGNAL, shall be used with the emergency-vehicle traffic control signal on each major street approach. In addition, a sentence will be added to Section 4F.02, paragraph 5, to be consistent with the GUIDANCE in Section 2B.40 that the EMERGENCY SIGNAL sign be mounted adjacent to an overhead emergency-vehicle traffic control signal.

164. In Section 4K.03 Warning Beacon, the FHWA is adding the phrase ''except for SCHOOL SPEED LIMIT sign beacons'' to the second paragraph in the STANDARD statement to clarify that SCHOOL SPEED LIMIT sign beacons are allowed to be included within the border of the sign to be consistent with Section 7B.10.

165. In Section 4L.02 In-Roadway Warning Lights at Crosswalks, a commenter suggested that the third paragraph in the OPTION statement proposed in the 1999 NPA, concerned with the placement of the lights in the center of lanes and on lane lines be relocated to the GUIDANCE statement. In order to provide clear recommendations to agencies regarding the proper installation of these new optional devices, the FHWA is making this change and also adding the phrase ''away from the normal tire track paths'' at the end of the paragraph. The paragraph now reads as follows: ''If used, In-Roadway Warning Lights should be installed in the center of each travel lane, at the centerline of the roadway, at each edge of the roadway or parking lanes, or at suitable locations away from the normal tire track paths.

Discussion of Adopted Amendments to Part 5—Low Volume Roads

The FHWA received 231 comments from 23 commenters concerning Part 5. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 71358 on December 21, 1999.

166. A new Part 5 is added to the MUTCD entitled, ''Traffic Control Devices for Low Volume Roads.'' After consideration, the NPA's proposed title, ''Low Volume Rural Roads'' was revised because these roads are not exclusive to rural areas.

167. In Section 5A.01 Function, 16 commenters requested that the maximum volume on low volume roads be raised from the proposed 200 AADT (average annual daily traffic) to 400 AADT. The FHWA agrees and is adopting a maximum volume of 400 AADT because AASHTO uses 400 vehicles per day as the breakpoint for low-volume roads in its current version of ''A Policy on Geometric Design of Highway and Streets.'' [14] Also, recent on-going research conducted by Midwest Research Institute as part of NCHRP 20–7(108) indicates that those geometric design guidelines applicable to roads with AADTs of 400 vehicles per day or less differ from geometric design guidelines normally applied to higher volume. This change provides State and local jurisdictions with more flexibility when installing and maintaining traffic control devices to provide for efficient and safe traffic flow within their fiscal restraints.

Also in this section, several commenters requested a change in the proposed definition of low volume roads which restricted these roads to those facilities outside the corporate limits of communities. The FHWA is changing the language to describe low volume roads as facilities lying outside built-up areas of cities, towns and communities. The FHWA is adopting this definition to avoid confusion caused by varying corporate limit treatments practiced by State and local agencies.

Additionally in Section 5A.01, in the STANDARD statement, the classification scheme for low volume roads is being changed to paved and unpaved. This modification replaces the proposed Categories 1 through 3 in this section and throughout Part 5. Several commenters expressed problems with applications of the proposed categories, and the FHWA agrees that the classification change will eliminate most of the confusion.

168. In Section 5A.03 Design, in the second paragraph of the STANDARD statement, proposed Table 5A–1 is mentioned. The heading for this table is changed to ''Minimum Sign Sizes for Low Volume Roads,'' and a number of signs are eliminated that typically would not be used on low volume roads. The following signs have been removed from Part 5:

R2–3 Night Speed Limit
R3–1 Turn Prohibition
R9–1 WALK ON LEFT FACING TRAFFIC
R10–7 DO NOT BLOCK INTERSECTION
R13–1 Weigh Station
R14–1 TRUCK ROUTE
R14–3 Hazardous Cargo Prohibition

The above changes to Table 5A–1 do not prevent a jurisdiction from using the above signs or any other sign in the MUTCD that is appropriate for its roadways.

Also in Table 5A–1, the FHWA has changed minimum sizes for several signs so that all signs in the table are consistent with dimensions published in other parts of the MUTCD. This will not impose any additional requirement to State and local highway agencies. Minimums for the following signs have been modified:

R1–1 STOP
W5–2 NARROW BRIDGE
W8–3 PAVEMENT ENDS
W11–(XX) Entering/Crossing
W10–2, 3, 4 Railroad Crossing Warning
W14–3 NO PASSING ZONE
W20–1 ROAD WORK XX M (FT)
W20–7a Flagger
W20–7b BE PREPARED TO STOP
W21–1a Workers
W21–6 Survey Crews

The above changes to Table 5A–1 will have no impact on State or local jurisdictions.

169. In Section 5C.09 Motorized Traffic and Crossing Signs (W–11 Series and W8–6), the proposed section on seasonal or temporary signing is changed from a STANDARD statement to GUIDANCE statement in the final

[14] ''A Policy on Geometric Design of Highway and Streets'' 1994 Edition (American Association of State Highway and Transportation Officials-AASHTO).

MUTCD amendment. Although it is good practice to remove or cover such signs when the activities described will not be occurring for an extended period of time, it is not imperative for low volume roads.

170. In Section 5E.02 Center Line Markings, the FHWA has eliminated the proposed OPTION stating a minimum width for roadways with center line markings. There are no definitive guidelines, supported by research, for such minimums on low volume roads.

171. In Section 5E.05 Object Markers, the FHWA has changed the proposed first phrase of the GUIDANCE statement to an OPTION statement for when to consider to use TYPE III barricades to mark the end of a low volume road. Commenters pointed out that such barriers are typically not warranted for low volume roads and should not be recommended as a general treatment for such facilities.The FHWA agrees because no supporting data has been presented showing that the barricades are needed on all low volume roads.

172. In Section 5F.05 Pavement Markings, the proposed STANDARD statement is removed as it only directed readers to Sections 8B.9 and 8B.10. The proposed SUPPORT statement is changed to GUIDANCE on when to install pavement markings in advance of highway-rail grade crossings on low-volume roads. The FHWA agrees with the commenters who suggested that on a paved road with center line markings, the unfamiliar motorist would have no knowledge of the low AADT and, therefore, would expect highway-rail grade crossing markings. These markings should increase safety at these highway-rail grade crossings. This should have no impact on State or local jurisdictions because this is not a change from the current MUTCD requirements.

Discussion of Adopted Amendments to Part 6—Temporary Traffic Control

The FHWA received 2875 comments from 56 commenters concerning Part 6. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 73606 on December 30, 1999.

173. The title of Part 6 is changed from ''Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations'' to ''Temporary Traffic Control'' as indicated in the NPA.

174. In Chapter 6A General, the FHWA has moved a portion of the STANDARD from the end of Chapter 6B Fundamental Principles because it applies to all Chapters of Part 6. The moved portion reads, ''There shall be adequate statutory authority for the implementation and enforcement of needed traffic regulations, parking controls, speed zoning, and incident management. Such statutes shall provide sufficient flexibility in the application of traffic control to meet the needs of changing conditions in the temporary traffic control zone.''

175. In Chapter 6B Fundamental Principles of Temporary Traffic Control, paragraph 3b of the GUIDANCE statement, a number of commenters suggested the need to indicate conditions under which permanent traffic control devices do not have to be removed in a temporary traffic control zone. The FHWA is retaining language similar to that used in the 1988 MUTCD, Revision 3 dated September 3, 1993, which clearly indicated which traffic control devices to be used. The last sentence reads, ''However, in intermediate-term stationary, short term and mobile operations where visible permanent devices are inconsistent with intended travel paths, devices that highlight or emphasize the appropriate path should be used.''

In Chapter 6B Fundamental Principles of Temporary Traffic Control, paragraph 4c of the GUIDANCE statement, a commenter suggested the need to describe ambient conditions factors. The FHWA is retaining the modifiers ''road user volumes, light, and weather'' from the 1988 Edition of MUTCD, Revision 3 to describe ambient conditions. This change should have no impact on State or local highway agencies since the FHWA is retaining the current MUTCD requirements.

176. In Section 6C.01 Temporary Traffic Control Plans, the FHWA is adding a fourth GUIDANCE statement to provide additional information on minimizing the need to reduce speed limits in temporary traffic control zones. It reads, ''Reduced speed limits should be used only in the specific portion of the temporary traffic control zone where the above conditions or restrictive features are present; however, frequent changes in speed limit should be avoided. A traffic control plan should be designed so that vehicles can safely travel through the temporary traffic control zone with a speed limit reduction of no more than 10 mph. A reduction of more than 10 mph in the speed limit should be used only when required by restrictive features in the temporary traffic control zone. Where restrictive features justify a speed reduction of more than 10 mph, additional driver notification should be provided. The speed limit should be stepped down in advance of the location requiring the lowest speed, and additional warning should be used.'' This change will have no economic impact on State and local highway agencies. However, roadway safety and efficiency should increase because research has shown that speed reductions should be no more than a 10 mph increment.

177. A new Section 6C.02 Temporary Traffic Control Zones, is added to the MUTCD to better define temporary traffic control zones. It contains only general information concerned with temporary traffic control zones. A new definition for ''temporary traffic control zones'' includes a work area or an incident area. In the NPA this text was included as part of the Section 6C–2 Components of Temporary Traffic Control Zones. This change is not adding any new requirements for State or local jurisdictions.

178. Section 6C.03 Components of Temporary Traffic Control Zones (referenced in the NPA as Section 6C.2) includes information concerned exclusively with the four components of a temporary traffic control zone, *i.e.,* the advance warning area, the transition area, the activity area, and the termination area. The examples of a work zone area and an incident area are removed from this Section 6C.2 and relocated to Chapter 6G which is concerned with types of temporary traffic control zone activities. In the NPA, the text of Sections 6C.02 and 6C.03 was combined into just one section and four commenters suggested that the NPA language was too cumbersome and recommended that the text be split. The FHWA agrees and has made the change to clarify the text.

179. In Section 6C.06 Activity Area (referenced in the NPA as Section 6C.5), Table 6–1, ''Guidelines for Length of Minimum Advance Working Area,'' was incorrectly titled and located in the NPA. The FHWA is renumbering the table as Table 6E–1, is moving the table to Section 6E.05 Flagger Stations, and re-titling it ''Distance of Flagger Station in Advance of Work Space.'' This table provides information on the distance a flagger should be in advance of the work area based on the speed of approaching traffic. The information in the table has nothing to do with Activity Areas and lengths of minimum advance working areas.

180. In Section 6C.07 Termination Area (referenced in the NPA as Section 6C.6), the FHWA has changed the first SUPPORT statement to a STANDARD as the statement is a definition, and definitions are by their very nature STANDARDS.

The GUIDANCE statement dealing with END ROAD WORK signs has been moved to Section 6F.49 END ROAD WORK Sign (G20–2) as it most appropriately goes in the section that describes the sign and not in this section discussing a termination area.

In place of the GUIDANCE statement, an OPTION statement has been added to this section indicating the need for an END ROAD WORK, speed limit, or other sign to indicate to road users that they may resume normal operations. The above changes were made to be consistent throughout the MUTCD and to add guidance to optimize road user performance in temporary traffic control zones.

181. In Section 6C.08 Tapers (referenced in the NPA as Section 6C.7), in the sixth proposed SUPPORT statement regarding a One-Lane, Two-Way Taper, the last sentence, ''Typically, traffic is controlled by a flagger or temporary traffic control signal.'' Seven commenters suggested the need that this and other sections be more specific on providing temporary traffic control for two-way traffic using a one-lane roadway. The FHWA agrees and has changed the text accordingly. The text is being revised and relocated to the sixth GUIDANCE statement in the MUTCD because anywhere two-way traffic is moved in a one-lane of a road, there needs to be some type of temporary traffic control to maintain traffic flow and safety. The GUIDANCE statement reads, ''Traffic should be controlled by a flagger or temporary traffic signal (if sight distance is limited), or a STOP or a YIELD sign.'' This change should have no impact on State and local jurisdictions while improving road user safety by providing positive direction to road users during temporary traffic control operations.

182. In Section 6C.10 One-Lane, Two-Way Traffic Control (referenced in the NPA as Section 6C.9), the FHWA is changing the first proposed GUIDANCE statement indicating the need for some type of temporary traffic control for one-lane, two-way traffic flow operations to a STANDARD. Anywhere two-way traffic is moved in a one-lane of a road, there needs to be some type of temporary traffic control to maintain traffic flow and safety. This change should have no impact on State and local jurisdictions while improving road user safety by providing positive direction to road users during temporary traffic control operations.

183. In Section 6D.01 Pedestrian Considerations, the proposed third STANDARD statement is changed to a GUIDANCE statement because there are no acceptable measures to judge ''when pedestrians are especially vulnerable to impact by errant vehicles, all pedestrians shall be separated and protected by a temporary barrier.'' Three commenters recommended this change and the FHWA agrees. The fifth GUIDANCE statement now reads, ''When pedestrian and motor vehicle paths are rerouted to a closer proximity to each other, consideration should be given to separating them with a temporary barrier.'' This will provide more flexibility to State and local highway agencies and, thereby, reducing the impacts on them.

Also in this section, the first STANDARD statement is relocated from the end of proposed Section 6D.2 Worker Considerations, because it is applicable to both pedestrian and worker safety. These changes were based on comments from the NCUTCD as well as other commenters. The FHWA agrees and it now reads, ''the various traffic control provisions for pedestrian and worker safety set forth in this Part shall be applied by qualified persons after appropriate evaluation and engineering judgment.''

184. In Section 6E.01 Qualifications for Flaggers, the FHWA is changing the first proposed SUPPORT sentence to a STANDARD as the statement is a definition and definitions are by their very nature STANDARDS.

185. In Section 6E.03 Hand-Signaling Devices, the proposed statement ''When flashing lights are used at night, the illumination shall not blind drivers.'' was questioned by three commenters because there no acceptable measures to determine this. The FHWA agrees and has removed the statement from the second GUIDANCE of this section.

In the second STANDARD the word ''red'' was inadvertently left out of the NPA. The STANDARD now reads, ''When used at nighttime, flags shall be retroreflectorized red.'' This is identical wording to that in the 1988 Edition of MUTCD, Revision 3. This should have no impact on State or local governments since the FHWA is retaining the current requirements.

186. In Section 6F.01 Types of Devices, the proposed first SUPPORT statement is changed to a GUIDANCE statement and revised to read, ''The design and application of temporary traffic control devices used in temporary traffic control zones should consider the needs of all road users.'' This change is made to emphasize the need to consider all road users, pedestrians, bicyclists, transit, and railroads as well as motor vehicle traffic, when designing and applying traffic control devices.

187. In Section 6F.02 General Characteristics of Signs, the FHWA has added an OPTION statement which retains language from the 1988 MUTCD, Revision 3 dated September 3, 1993, that allows the use of non-black on orange pedestrian warning signs in work zones. The new OPTION statement reads, ''In order to maintain the systematic use of yellow or fluorescent yellow-green background for pedestrian, bicycle, and school warning signs in a jurisdiction, the yellow or fluorescent yellow-green background for pedestrian, bicycle, and school warning signs may be used in temporary traffic control zones.'' This OPTION is modified to include the fluorescent yellow-green color because many jurisdictions have adopted this optional warning sign color for pedestrian, bicyclist and school facilities and locations. In addition, this provides more flexibility to State and local highway agencies to increase awareness of pedestrians and bicyclists in temporary traffic control zones.

188. In Section 6F.03 Sign Placement, the FHWA is adding the GUIDANCE statement, ''Neither portable nor permanent sign supports should be located on sidewalks, bicycle lanes, or areas designated for pedestrian or bicycle traffic.'' The Insurance Institute for Highway Safety commented on this omission that would allow the placement of temporary traffic control signs to hinder the movement of pedestrians and bicyclists. The FHWA agrees and this should not have an impact on State or local governments.

189. In Section 6F.09 LOCAL TRAFFIC ONLY Signs (R–11–3, R11–4), the FHWA is changing the first STANDARD statement to a GUIDANCE statement to provide more flexibility in signing in rural communities where the temporary traffic control zone may be within a residential block and not kilometers (miles) down a road without intersections.

190. Section 6F.15 Warning Sign Function (as referenced in the NPA) has been combined with Section 6F.16 Warning Sign Design and Application (as referenced in the NPA), and renamed, ''Section 6F.15 Warning Sign Function, Design, and Application.'' These changes were made because the FHWA agrees with the comments from six commenters that the material in the two sections really belongs together.

Also in Section 6F.15, the STANDARD statement and GUIDANCE statement proposed in the NPA concerning flexible signs are removed as these items are adequately addressed in Section 6F.02 Signs, and in Section 6F.03 Sign Placement. Five commenters indicated this overlap.

191. Section 6F.16 Position of Advance Warning Sign (referenced as

Section 6F.17 in the NPA) has been combined with Section 6F.18 Other Advance Warning Signs (as referenced in the NPA) and Section 6F.19 Application of Warning Signs for Maintenance, Minor Road Work, and Utility Sites (as referenced in the NPA) and has been moved and named, ''Section 6F.16 Position of Advance Warning Signs.'' These changes were made because the FHWA agrees with the five commenters that indicated the overlap in technical issues in these three sections.

192. In Section 6F.20 ONE LANE ROAD Sign (W20–4) (referenced in the NPA as Section 6F.23), the FHWA has moved to Section 6C.10 One-Lane, Two-Way Traffic Control, the proposed GUIDANCE statement concerning how to temporarily control two-way traffic on a one-lane roadway. This GUIDANCE statement has been reworded to read, ''If traffic on the affected one-lane roadway is not visible from one end to the other, then flagging procedures or traffic signal control should be used to control alternate traffic flows.'' This GUIDANCE has been clarified and is more appropriately placed in Section 6C.10.

193. In Section 6F.28 EXIT OPEN, EXIT CLOSED signs (E5–2) (referenced in the NPA as Section 6F.31), one commenter suggested that a complementary sign, EXIT CLOSED (E5–2a), was inadvertently left out of the NPA. The FHWA agrees and has included this sign in this section as an OPTION. In temporary traffic control work zones in and around interchanges it is important to provide current traveler information such as notifying motorists that an exit is, in fact, closed. This change provides for uniformity for signs used at exit locations and will have no impact on State or local highway agencies.

194. In Section 6F.52 Portable Changeable Message Signs (referenced in the NPA as Section 6F.55), the FHWA is changing the first SUPPORT statement to a STANDARD statement as the statement is a definition and definitions are by their very nature STANDARDS. The statement is revised to read, ''Portable Changeable Message Signs are traffic control devices with the flexibility to display a variety of messages. Each message consists of either one or two phases, only. Typically, a phase consists of up to three lines of eight characters per line.''

195. In Section 6F.53 ARROW PANELS (referenced in the NPA as Section 6F.56), the FHWA is changing the first proposed SUPPORT statement in the NPA to a STANDARD as the statement is a definition and definitions are by their very nature STANDARDS.

Additionally, since arrow panels are similar to portable changeable message signs, the FHWA is adding a GUIDANCE statement to Section 6F.53 identical to the GUIDANCE statement for locating and providing protection for portable changeable message signs. The GUIDANCE statement reads, ''An arrow panel should be placed on the shoulder of the roadway or, if practical, further from the traveled lane. It should be delineated with retroreflective temporary traffic control devices or when within the clear zone, shielded with a barrier or crash cushion. When an arrow panel is not being used, it should be removed; if not removed, shielded; or if the previously two options are not feasible, delineated with retroreflective temporary traffic control devices.'' This GUIDANCE will maintain traffic flow efficiency and improve safety.

196. In Section 6F.55 Channelizing Devices, Subsection A General (referenced in the NPA as Section 6F.58), the FHWA changed the second paragraph of the second SUPPORT paragraph in the NPA ''Standard designs of channelizing devices are shown in Figure 6F–06,'' to a STANDARD at the beginning of the section. The design dimensions in Figure 6F–06 have always been STANDARDS. One commenter pointed out this discrepancy.

Also in this section, in Subsection D Vertical Panels, the requirement that vertical ''panel strip widths shall be 150 mm (6 in), except where panel heights are less than 900 mm (36 in), then 100 mm (4 in) stripes may be used'' was inadvertently reversed in the NPA. The FHWA has corrected this wording making it similar to that in the1988 MUTCD, Revision 3 dated September 3, 1993. Since this change is keeping the current requirements of the MUTCD, there is no impact on State or local highway agencies.

Additionally, Subsection G Direction Indicator Barricade, the FHWA has changed the proposed first GUIDANCE statement to an OPTION statement to read: ''The Direction Indicator Barricade may be used in tapers, transitions, and other areas where specific directional guidance to motorists is necessary.'' Direction indicator barricades do not have to always be used in these situations. This provides State and local highway agencies more flexibility in selecting temporary traffic control devices for work zones.

Subsection J Opposing Traffic Lane Divider, is more appropriately relocated to this section from proposed Section 6F.67 as referenced in the NPA because it provides directional guidance to motorists.

197. In Section 6F.69 Lighting Devices, Subsection D(4) Warning Lights (referenced in the NPA as Section 6F.60), the FHWA relocated to this Subsection a GUIDANCE statement from Figure TA–34 and Figure TA–36. The GUIDANCE statement reads, ''The maximum spacing for warning lights should be identical to the channelizing device spacing requirements.'' This GUIDANCE is applicable to any situation where lighting devices are used, not just in the two typical application Figures.

The FHWA is moving the SUPPORT statement (referenced in the NPA as Subsection D(4) Flashing Beacon (Vehicle Mounted)) ''During normal daytime maintenance operations, the functions of flashing warning beacons are adequately provided by rotating lights or strobe lights on a maintenance vehicle'' to the beginning of the Section. Furthermore, the FHWA is retaining a STANDARD statement, ''The use of the vehicle hazard warning lights shall not be used instead of rotating lights or strobe lights'' and an OPTION statement, ''The vehicle hazard warning lights may only supplement the rotating lights or strobe lights'' to clarify the intent of 'rotating lights or strobe lights'. The STANDARD and OPTION statements were added to MUTCD in January 9, 1997, and were inadvertently omitted in the NPA.

198. In Section 6F.74 Temporary Traffic Control Signals (referenced in the NPA as Section 6F.61), the first GUIDANCE is revised to read: ''When temporary traffic control signals are used, conflict monitors that are typically used in traditional traffic signal operations should be used.'' This was corrected because the spacing between traffic signal installations, as proposed in the NPA, has nothing to do with the need for a conflict monitor. This has no impact on State or local governments since the FHWA is retaining existing MUTCD requirements.

199. In Section 6F.75 Temporary Traffic Barriers (referenced in the NPA as Section 6F.62), the FHWA is changing a GUIDANCE statement to a STANDARD statement. The statement reads, ''In order to mitigate the effect of striking the end of a temporary traffic barrier, the end shall be installed in accordance with the AASHTO Roadside Design Guide by flaring until the end is outside the acceptable clear zone or by providing with crashworthy end treatments.'' This requirement should improve safety because research indicates that there are no acceptable methods of providing the required

degree of safety other than flaring or providing crashworthy end treatments.

200. In Section 6F.76 Crash Cushions, Subsection B Truck-Mounted Attenuators, the second proposed SUPPORT statement is changed to a STANDARD in the new MUTCD as the statement is a definition of ''truck-mounted attenuators'' and definitions are by their very nature STANDARDS.

Under this same Subsection B, the proposed the first STANDARD statement is changed to a GUIDANCE statement in the new MUTCD to provide more flexibility in the spacing of the shadow vehicle behind the workers and their work vehicles.

201. In Section 6G.05 Work Outside of Shoulder (referenced in the NPA as Section 6G.6), the FHWA has changed to an OPTION statement the GUIDANCE statement which reads, ''Where the activity is spread out over a distance of more than 3.2 km (2 mi), the sign should be repeated every 1.6 km (1 mi).'' Since the work being performed is outside the shoulder, there may not always be a need to install signs that frequently. This will provide more flexibility to State and local highway agencies.

202. In Section 6G.06 Work on the Shoulder With No Encroachment (referenced as Section 6G.7, Subsection B in the NPA), the GUIDANCE statement ''Truck off-tracking should be considered when determining whether the minimum lane width of 3 m (10 ft) is adequate'' from Figure TA–43 has been added to Section 6G.06 Subsection B Minor Encroachment on the Traveled Way. It is in this Subsection that minimum lane widths are discussed and accounting for truck off-tracking is applicable to all temporary traffic control zones with minimum lane widths.

203. Section 6G.08 Work Within the Median, is added to the new MUTCD as a separate section. It was referenced in the NPA as the GUIDANCE statement under Section 6G.3. The new section reads, ''If work in the median of a divided highway is within 4.5 m (15 ft) from the edge of the traveled way for either direction of travel, traffic control should be used through the use of advance warning signs and channelization devices.'' This change provides for improved road user safety in temporary traffic control work zones.

204. In Section 6G.10 Work Within Traveled Way of Urban Streets, Subsection B. Bicyclists, the FHWA is changing a proposed SUPPORT statement to a STANDARD statement to ensure that bicyclists are accommodated during a temporary traffic control zone. The statement reads, ''If the work area affects the movement of bicyclists, adequate access to the roadway, bicycle path, or shared-use path shall be provided. For details on controlling bicycle traffic, see Part 9.'' This change should provide for increased safety for bicyclist in temporary traffic control work zones and has no significant impact on State or local government agencies.

205. In Section 6G.18 Work in the Vicinity of Highway-Rail Grade Crossings, a new GUIDANCE statement is added to read, ''Early coordination with the railroad company should occur before work starts.'' As it is important that all users of the work area are aware of temporary changes and for continued highway-rail grade crossing operations. This early coordination should improve road user operations and improve safety while having no economic impact on State and local highway agencies.

Discussion of Adopted Amendments to Part 7—Traffic Controls for School Areas

The FHWA received 156 comments from 20 commenters concerning Part 7. The notice of proposed amendments (NPA) was published at 62 FR 64324 on December 5, 1997.

206. In Section 7A.01, the Typical School Route Plan Map (Figure 7A–1) is revised as proposed in the NPA. Several comments were received suggesting modifications to the figure. The figure has been enlarged and printed in color to better identify signals and stop signs. The arrow heads reflecting direction of travel are enlarged. Traffic control devices are added where intersecting streets meet the collector road.

The FHWA received no negative comments regarding our proposal to include middle and high schools in the development plans for school routes. This amendment to Section 7A.01, paragraph 6, adopts the following GUIDANCE: ''A school route plan for each school serving elementary to high school students should be prepared * * *.''

The amendment to Section 7A.01, paragraph 8, requires the traffic control devices in the school plan to be related to the volume and speed of vehicle traffic, street width, and the number and age of children using the crossing. There were no negative comments to this change.

207. The FHWA received two comments that objected to the deletion of the text found in Sections 7A.05 through 7A.10, 7B.01 through 7B.04, 7B.07, and 7B.08 of the 1988 MUTCD. The FHWA believes that retaining this text is not necessary with the new layout of the MUTCD, because this information is provided in other sections.

208. Six comments were received on the proposed text in Section 7B.01 which found the sign size terminology confusing. Based on these comments, the heading is revised to read ''Size of School Signs.'' The FHWA received no other negative comments regarding this amendment. However, there were three comments regarding Table 7B–1 ''Size of School Area Signs and Plaques.'' One comment suggested using ''centimeters'' to display metric units. In a final rule published at 64 FR 33751 on June 24, 1999, the FHWA adopted two American Association of State Highway and Transportation Officials publications for the design of traffic control devices for use on all roads open to public travel. These documents use millimeters, not ''centimeters.'' Another comment noted that the proposed table was not in agreement with the ''Standard Highway Signs'' book.[15] This book is also undergoing revision. The FHWA will ensure that there are no conflicts with sign sizes shown in both publications. There was a comment regarding the ''older driver'' issue of sign size and legibility. The FHWA believes this issue is adequately covered in the OPTION statement that reads: ''The 'special' sized sign may be used for applications that require increased emphasis, improved recognition or increased legibility.''

Based on comments received, the OPTION statement has been expanded to define where the minimum size signs are used.

209. A new section, 7B.07 Sign Color for School Warning Signs, is added that addresses the optional use of the color fluorescent yellow green for school warning signs. This amendment was adopted in a final rule published at 63 FR 33546 on June 19, 1998. The FHWA has included this OPTION for use of the color and GUIDANCE that addresses the systematic approach for the use of this color.

210. Section 7B.08 School Advance Warning Sign (S1–1) was referenced in the NPA as Section 7B.07 School Advance Warning Sign (S1–1). Section 7B.09 School Crosswalk Warning Assembly (S1–1 with Diagonal Arrow) was referenced in the NPA as Section 7B.08 School Crosswalk Warning Sign

[15] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the 1988 MUTCD. It is available for purchase from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

(S2–1). The text for both sections is modified to be consistent with Section 2C.36 which discusses a new application for advance crossing and crossing signs. The FHWA is eliminating the crosswalk lines on the crossing signs since road user comprehension studies show that they generally do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the new application consists of a crossing sign with supplemental downward pointing arrow plaque to show the crossing location. For advance crossing situations, the new application will consist of a crossing sign supplemented with an ''Ahead'' or ''XX feet'' plaque. This assembly shall be used in advance of the first installation of the School Speed Limit Sign assembly. The FHWA believes that the supplemental plaques must be used (not optional) to ensure safety of children at crosswalks in school zones. The FHWA is providing a phase-in compliance period of 10 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for new sign installations.

211. In Section 7B.09, paragraph 4, under the GUIDANCE statement, new text recommends that an engineering study should be conducted before installing the School Crosswalk Warning Sign. No commenters objected to this amendment. However, as mentioned above, the sign is now referred to as the School Crosswalk Warning Assembly sign.

212. Section 7B.11 changes the title to ''School Speed Limit Assembly (S4–1, S4–2, S4–3, S4–4, S5–1).'' The FHWA is adopting this amendment based on two comments received indicating that this section describes the complete assembly of signs that make up a school speed limit sign, not just the plates. The FHWA concurs with this recommendation.

Also in Section 7B.11, one commenter suggested moving the text for the ''End School Zone'' (S5–2) sign to a separate section, since it is a separate sign from the others found in 7B.11. This text is moved to new Section 7B.13.

213. The title of Section 7B.12 is changed to ''School Reduced Speed Ahead Assembly.'' This amendment is based on one comment received suggesting changing the title to better reflect the actual sign used and illustrated. The appropriate text is also modified to reflect this change.

214. One comment was received for Section 7B.14 Parking and Stopping Signs (R7 and R8 Series), suggesting that ''No Standing'' signs be addressed as an example. The FHWA agrees with this suggestion and a discussion is included in paragraph 2.

Figure 7–2, ''Placement of the S1–1 sign'' which was shown in the 1988 MUTCD, is deleted based on three comments that pointed out that this subject is covered in Section 2C, and revised Figure 7B–1 ''Typical Signing for School Area Traffic Control'' that is depicted in this Final Rule. The FHWA has renumbered the remaining figures appropriately.

The revised Figure 7B–1 is corrected to reflect the assembly signs with the diagonal arrow and the ''AHEAD'' and ''XX FEET'' plaques as discussed in Sections 7B.08 and 7B.09. The figure has also been expanded to show the metric versions of the speed limit signs along with English units.

215. In Section 7C Markings, four commenters indicated conflict with the text in Part 3 Markings. The FHWA has amended the text for consistency with Part 3.

216. A GUIDANCE statement in Section 7C.04 Stop Line Markings, paragraph 1, is adopted for the placement of a Stop line in the absence of a marked crosswalk.

217. This amendment to Section 7C.06, the OPTION statement, clarifies that the ''SCHOOL'' word markings may extend across two lanes. (See Figure 7C–1). In the proposed text, this OPTION was inadvertently shown in the GUIDANCE discussion, and was brought to FHWA's attention by a docket comment.

218. In Chapter 7D Signals, the text is deleted and the reader is referred to Part 4 Signals, Section 4C.06 School Crossing Signal Warrant. The FHWA only received one comment in opposition to this change.

219. Chapter 7E Crossing Supervision deletes the discussion on legal authority for adult guards and student patrols since the state and local agencies are responsible for establishing laws regarding these crossing supervisors. There were no objections received on this change.

220. This amendment to Section 7E.04, paragraph 2, is based on a comment that the FHWA received indicating that mentioning ''daytime, nighttime, and twilight hours,'' and the reference to Section 6E.03 is redundant. The FWHA agrees and the reference to ''daytime, nighttime, and twilight hours'' is deleted.

The FHWA is also amending the text in the last paragraph of Section 7E.04 to include ''police officers'' in addition to adult guards and student patrols in wearing high-visibility retroreflective material or clothing, since police officers may be used for crossing supervision as mentioned in Section 7E.06.

221. The discussion on the use and size of the Stop paddle in Section 7E.05, paragraph 2, is changed the from OPTION to GUIDANCE. It was also suggested that the STANDARD in paragraph 3 be modified to indicate that the paddles should be ''at least'' 450mm (18 in). The FHWA agrees and is adopting this change. This would then allow the use of a larger paddle. Paragraph 3 is also modified to require the word ''STOP'' on both sides of the paddle instead of ''one or both sides'' since it is important for traffic to read and respond to this command from both directions of travel.

222. Section 7E.10 High Visibility Clothing has been eliminated since this text is a duplicate to that stated in Section 7E.04.

Discussion of Adopted Amendments to Part 8—Traffic Controls for Highway-Rail Grade Crossings

The FHWA received 412 comments from 52 commenters concerning Part 8. Only the technical (not editorial) comments are addressed in this discussion. Two notices of proposed amendments (NPA) were published at 64 FR 691 on January 6, 1997 and at 64 FR 71358 on December 21, 1999.

223. In Section 8A.01 Introduction, commenters from 4 States and 1 county recommended that the last sentence in Paragraph 3 of the 1999 NPA, a SUPPORT statement, be changed to reflect that the responsibility for determining the need and selection of devices at a grade crossing should be shared with the highway agency, the regulatory agency, and the railroad company, instead of just resting with the highway agency. The FHWA and the Federal Railroad Administration have reviewed Federal law, regulations, and guidance and found that although they encourage voluntary railroad involvement (as members of diagnostic teams where Federal funds are involved) in the analysis of need for and type of protection, they do not impose on railroads the responsibility to make, or share in making, determinations of need for or selection of traffic control devices. Therefore, the FHWA is not making the suggested changes.

224. The FHWA is changing the title for Section 8A.05 from ''Traffic Controls in Work Zones During Construction or Maintenance,'' to ''Temporary Traffic

Control,'' to be consistent with Part 6 of this Manual.

225. In proposed Section 8A.08 Private Highway-Rail Grade Crossings, a State commented that paragraph 4 in the GUIDANCE statement containing a recommendation to evaluate a private crossing by means of an engineering study to determine possible closure or the appropriate type of traffic control, be downgraded to OPTION or deleted. The FHWA has decided to delete this section on Private Highway-Rail Grade Crossings. The Federal Railroad Administration will be addressing the private highway-rail grade crossing issue in an upcoming safety inquiry.

226. In Section 8B.02 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1, R15–2), the FHWA has added a STANDARD statement (as proposed in the 1999 NPA) to require the placement of a strip of retroreflective white material on the back of each Crossbuck sign for the length of each blade, except where Crossbuck signs are installed back-to-back. The FHWA also added a STANDARD statement (as proposed in the 1999 NPA) to require the placement of a strip of retroreflective white material on the front and back of each Crossbuck support. The FHWA is providing a phase-in compliance period of 10 years for existing installations to minimize any potential impact to State and local highway agencies. This change takes effect immediately for all new installations.

227. In Section 8B.03 Highway-Rail Grade Crossing Advance Warning Signs, a State recommended the continued inclusion of the phrase, ''Where physical conditions do not permit even a partially effective display of the sign,'' under the STANDARD statement. The FHWA agrees and is including this item, which is one of the exceptions to the mandated use of the W10–1 Highway-Rail Grade Crossing Advance Warning sign, because it is still relevant.

In response to a comment, the FHWA is upgrading the proposed last paragraph of Section 8B.03 from GUIDANCE to STANDARD and placing it as Item A in the first paragraph of this section. This item will require the use of the W10–2, W10–3, or W10–4 sign on the parallel highway when the parallel highway is less than 100 feet from the railroad track.

In response to another commenter, the FHWA is adding the phrase ''(using the speed of the turning maneuver)'' to paragraph 4, STANDARD, to clarify what speed to use to determine placement distance on the parallel highway for the W10–2, W10–3, or W10–4 advance warning signs.

228. In Section 8B.06 DO NOT STOP ON TRACKS Sign, paragraph 1, GUIDANCE, the FHWA is changing ''engineering study'' to ''engineering judgment'' because engineering experience and familiarity with local traffic and geometric conditions is sufficient to determine whether the potential for vehicles stopping on tracks is high.

229. In Section 8B.12 NO SIGNAL Sign, a State, a county, and the Association of American Railroads commented on the inclusion of the NO SIGNAL sign in the MUTCD. They believe that the sign does not convey any needed information and just adds to sign clutter. The FHWA is retaining this optional sign because of comments from members of Congress and the FHWA's desire to provide warning to the road user that the crossing does not have active warning devices. In addition, no jurisdiction is required to install this sign. However, if a jurisdiction determines it is needed, this is a standard sign it may use.

230. The FHWA decided to change the sequence of sections near the end of Chapter 8B so that all signs are discussed first, then pavement markings for better continuity. The headings for Sections 8B.14, 8B.15, 8B.16, 8B.17, and 8B.18 now read as follows:

8B.14 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–5)
8B.15 Storage Space Signs (W10–11, W10–11a, W10–11b)
8B.16 Pavement Markings
8B.17 Stop Lines
8B.18 Dynamic Envelope Delineation

231. In Section 8B.14 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–15) (referenced in the NPA as Section 8B.16), several commenters suggested relocation of text concerning a hang-up of long wheelbase vehicles or trailers with low ground clearance from the STANDARD statement to the GUIDANCE statement. The FHWA moved the text because there are no established means for determining which crossings will create a hang-up of long wheelbase vehicles or trailers with low ground clearance.

232. In Section 8B.15 Storage Space Signs (referenced in the NPA as Section 8A.7), commenters from a State and a county remarked that the W10–11 Storage Space sign does not convey the information that there is limited space beyond the crossing. The FHWA agrees that the GUIDANCE should include the use of the W10–11a word message ''storage distance'' sign in conjunction with the W10–11 sign. Another commenter stated that the letter size on the W10–11a sign with four lines of text on a 24'' by 24'' (600 mm by 600 mm) panel will not be large enough to be legible to drivers at normal highway speeds. The FHWA agrees and is including a drawing of the W10–11a as a 30″ by 36″ (750 mm by 900 mm) sign with a 4-inch letter size in the MUTCD and in the Standard Highway Signs manual.[16]

Also, the FHWA is adding a new W10–11b word message storage distance sign as an OPTION to remind motorists of the storage distance space between the intersection and the tracks behind them.

233. In Section 8B.18 Dynamic Envelope Delineation (referenced in the NPA as Section 8A.6), a railroad company commented that the use of dynamic envelope delineation markings should be made an OPTION instead of GUIDANCE. There were a number of other comments about these markings being mistaken for stop lines, about how far from the tracks the markings should be placed, and the design of the markings.

One State requested that the entire section be deleted. Because of the comments and lack of real-world experience with these markings, the FHWA is changing this section to an OPTION until research on this concept is done. The FHWA would appreciate the assistance of the State and local jurisdictions that use these markings in determining their effectiveness.

234. In Section 8D.01 Introduction, the U.S. Architectural and Transportation Compliance Board requested that a number of provisions of the Americans with Disabilities Act (42 U.S.C. 1201 *et seq.*) be complied with when a ''pedestrian circulation route'' crosses a railroad track. The FHWA is adding a new GUIDANCE paragraph that reads, ''If a pedestrian route is provided, sufficient clearance from supports, posts, and gate mechanisms should be maintained for pedestrian travel.''

235. In Section 8D.03, the FHWA is changing the title from ''Flashing-Light Signals, Cantilevered Supported'' to ''Flashing-Light Signals, Overhead Structures'' because flashing-light signals are not only mounted on cantilevered supports, but also on overhead structures that extend over the entire width of the roadway.

236. In Section 8D.04 Automatic Gates, a comment was received on using medians at grade crossings that do not have four-quadrant gates. The FHWA agrees that text regarding median islands, which is adequately covered in

[16] Ibid.

Section 8D.05 in conjunction with four-quadrant gates, should also be covered in this section for automatic gates in general. The FHWA is adding a new OPTION paragraph to Section 8D.04 that reads, ''Automatic gate installations may include median islands between opposing lanes on an approach to a highway-rail grade crossing.''

237. Several comments were received on Section 8D.04, paragraph 4 in the 1999 NPA, GUIDANCE, and Section 8D.05, paragraph 5 in the 1999 NPA, GUIDANCE, that pointed out the paragraphs had both a ''shall'' and a ''should'' in the same sentence. They requested the FHWA change the ''should'' to a ''shall,'' thus making the entire sentence a STANDARD. The FHWA agrees that the gate going back to its upright position after the train is gone be mandatory, not just recommended, and is changing this sentence to a STANDARD, and therefore the ''should'' to a ''shall.'' Those submitting comments also wanted to delete the 12-second time period, but the FHWA is retaining the 12-second time period as GUIDANCE.

238. In Section 8D.07 Traffic Control Signals at or Near Highway-Rail Grade Crossings, paragraphs 1 and 3, the FHWA is reverting to the STANDARD and OPTION language used in the 1988 MUTCD describing the use of traffic signals at highway-rail grade crossings based on comments that the proposed language was not as clear about the types of crossings where traffic signals are appropriate. Also, a comment was received suggesting that this section clarify that the preemption condition should be terminated only when the crossing gates are energized to start their upward movement. The person submitting the comment felt clarification on preemption termination would make a difference in responding to situations when a second train approaches as the preemption associated with the first train is terminating. The FHWA agrees and is inserting clarifying wording.

Discussion of Adopted Amendments to Part 9-Traffic Controls for Bicycle Facilities

The FHWA received 357 comments from 79 commenters concerning Part 9. The notice of proposed amendments (NPA) was published at 64 FR 33802 on June 24, 1999.

239. The FHWA received no objections to deleting Sections 9A.01, 9A.04, 9A.06, 9A.07, and 9A.09. The information found in these sections can be found in Part 1 of the MUTCD.

240. In Section 9A.03, the FHWA is modifying the definitions by adopting the definitions published in the ''Guide for the Development of Bicycle Facilities,'' 1999 edition, AASHTO[17]. The term ''Shared Roadway'' has been deleted from the definitions relating to bicycle facilities since this term is not used in Part 9. The adoption of these definitions was recommended by the NCUTCD and concurred in by 65 commenters.

241. In Section 9A.05, the FHWA received comments from the NCUTCD and 65 other commenters to change the text related to the reference to the ''Uniform Vehicle Code and Model Traffic Ordinance'' [18] published by the National Committee on Uniform Traffic Laws and Ordinance, from a STANDARD to SUPPORT to better reflect the information included in this section. The FHWA agrees that this change is also consistent with the language found in Part 1 of the MUTCD.

242. In Section 9B.01, the FHWA received no negative comments regarding the consolidation of application and location of signs into this section. In paragraph 5 of this section, the NCUTCD and 68 other commenters suggested adding language discussing the maximum mounting height of 1.5m (5 ft) which is shown in Figure 9B–1. The FHWA agrees that this omission was an oversight and should have been stated in the text of Section 9B.01, therefore it is reviewing this section accordingly. In addition, there were no negative comments received concerning the minimum mounting height remaining 1.2m (4 ft) as reflected in Section 9B.01 paragraph 5, and Figure 9B–1.

There were several favorable comments received on Table 9B–1 ''Bikeway Sign Sizes.'' Several signs have been added to the table that were inadvertently left out of the NPA. The column reflecting sign sizes has been modified to read ''Minimum Sign Size.'' The signs have been reordered to reflect the order found in Part 2.

243. In Section 9B.02, the statement that sign sizes for shared use paths should be those shown in Table 9B–1 is changed from GUIDANCE to STANDARD since sign sizes are considered STANDARDS in other parts of the MUTCD. An OPTION statement is added to allow the use of larger size signs when appropriate.

Also in Section 9B.02, the OPTION statement regarding the use of fluorescent yellow green warning signs for ''Bicycle Crossing'' warning signs has been moved to Section 9B.15 Bicycle Crossing Warning Signs which is a more appropriate location for this discussion.

244. In Section 9B.03, text has been added to the OPTION statement that allows the use of larger STOP and YIELD signs when appropriate. One commenter recommended adding GUIDANCE on assignment of priority at path/roadway intersections and to recommend selection of appropriate intersection control. The FHWA is adding this language to this section.

245. In Section 9B.04 (referenced in the NPA as Section 9B.06 with the Proposed title ''Preferential Bicycle Land Signs''), the title of this section is modified to read ''Bicycle Lane Signs'' to be consistent with the definition found in Section 9A. The word ''preferential'' is deleted throughout the text for consistency. Three comments were received that addressed the inconsistency between this section and Section 9C.04 Markings For Bicycle Lanes.

Two paragraphs have been added to Section 9B.04 as an OPTION statement that addresses the use of the R3–16a and R3–17a ''Bicycle Lane'' signs that were shown in the NPA but not addressed in the text. The R3–16a sign may be used to notify the bicyclist that the bicycle lane is ending. The R3–17a sign may be used to notify bicyclists that they may encounter parked vehicles where parking is allowed.

The proposed deletion of the preferential lane symbol (diamond) for bicycles was well received. Both the R3–16 and R3–17 signs and appropriate figures that were proposed to be modified in the NPA, and there were no objections to this change. The FHWA is providing a phase-in compliance period of 5 years after the effective date of this final rule for existing markings to minimize any impact on State and local highway agencies. This change is effective immediately for new signing installations.

246. In Section 9B.05 (referenced in the NPA as Section 9B.10 and proposed changing the title from ''Lane Use Control Signs'' to ''Bicycle Preferential Lane-Use Control Signs''), the NCUTCD and 65 other commenters recommended changing this sign to ''Begin Right Turn Lane Yield to Bikes Sign'' (R4–4), to better define the sign's use. A comment was received and concurred with by 66 others that the OPTION statement

[17] The ''Guide for the Development of Bicycle Facilities,'' 1999 edition, AASHTO, is available for inspection as prescribed at 49 CFR part 7. It may be purchased from AASHTO, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001, or electronically at *http://www.aashto.org.*

[18] The ''Uniform Vehicle Code and Model Traffic Ordinance,'' 1992 Revision, is published by the National Committee on Uniform Traffic Laws and Ordinances, 107 S. West Street, #110, Alexandria, Virginia 22314. It is available for inspection as prescribed at 49 CFR part 7.

should be revised to reduce redundancy and to clarify the intent of this sign to be used at the beginning of right turn only lanes with parallel through bicycle lanes. The FHWA is revising this section to substitute the word ''weave'' for ''merge'' to better describe the movements at these locations.

Also, the R3–7 sign mentioned in Section 9B.10 is not specifically a bicycle-related sign, but is instead related to right turn only lanes. The FHWA agrees that this sign is adequately addressed in Part 2B and is deleted from this section.

247. In Section 9B.08 (referenced in the NPA as Section 9B.09), the title is changed from ''No Parking Signs'' to ''No Parking Bicycle Lane Signs.'' None of the commenters disagreed with this change.

One comment was received regarding the language found in the NPA Section 9B.09 and pointed out that due to variances in State and local laws affecting parking in bicycle lanes that this STANDARD text would be better addressed as GUIDANCE. The FHWA disagrees with this change in condition and is adding the text ''If the installation of signs is necessary to restrict parking * * *'' in order to clarify that when these signs are posted, this concept shall be followed. This addition to the text allows flexibility and has no impact on State and local jurisdictions.

248. In Section 9B.09 Bicycle Regulatory Signs (referenced in the NPA as Section 9B.05 Bicycle Restriction Signs), several commenters recommended changing the title and text to ''Bicycle Regulatory Signs'' since these signs are more appropriately noted as regulatory signs, not specifically as restriction signs. The FHWA agrees with this recommendation and is changing the title. It was also suggested that text be added to the OPTION statement in Section 9B.09 to address the use of the R10–3 sign at locations without pedestrian signals. The FHWA agrees and is adding this OPTION. The GUIDANCE statement is modified deleting the phrase ''where bicyclists are expected to dismount and walk with pedestrians while crossing the street'' since the State's law or Uniform Vehicle Code may not require bicyclists to dismount.

249. The proposed amendment to Section 9B.10 recommended changing the name of this sign from ''Travelpath Restriction Signs'' to ''Shared-Use Path Restriction Sign.'' None of the commenters disagreed with this change. The proposed change is adopted.

250. A new Section 9B.11 Other Regulatory Signs is added after it was suggested that there are other regulatory signs that may be applicable to shared use paths and other bicycle facilities.

251. Several comments were received on the text regarding Intersection Warning Signs in Section 9B.13 (proposed as Section 9B.14). The text was in conflict with that found in Section 2C.33. The text found under OPTION of Section 2C.33 has been inserted in this section and modified to include ''shared use paths.'' Several commenters also questioned the language in the second OPTION statement that also conflicted with the GUIDANCE statement found in Section 2C.33. The FHWA has deleted this second OPTION and added language to be consistent with the GUIDANCE statement found in Section 2C.33 that states that intersection warning signs should not be used when the path approach to the intersection has a stop, yield, or signal control.

252. In Section 9B.14, 67 commenters remarked that the word ''Hazardous'' in the Bicycle Hazardous Condition Warning sign be changed to ''Surface'' since the word may be misinterpreted for the warning condition ahead in the bicycle path surface. The FHWA agrees and the sign and text is changed to read ''Bicycle Surface Condition Warning Sign.''

It was also proposed in 9B.14 that the SLIPPERY WHEN WET plaque be made a supplemental plaque similar to other specific surface conditions (DIP, BUMP). The SLIPPERY WHEN WET plaque has been assigned the designation ''W8–10p.''

253. The text in Section 9B.15 Bicycle Crossing Warning Signs has been replaced with text that was published in Section 2C.36 which proposed a new application for advance crossing and crossing signs. The FHWA eliminated the crosswalk lines on the crossing signs since road user's comprehension studies show that they generally do not know the difference between the two signs. Instead of using crosswalk lines within the sign to indicate where the actual crossing is located, the FHWA is requiring a crossing sign with supplemental downward pointing arrow plaque to show the crossing location. In an advance crossing situation, the FHWA is requiring using a crossing sign supplemented with an ''AHEAD'' or ''XX FEET'' plaque. The FHWA is providing a phase-in compliance period of 7 years after the effective date of this final rule for existing signs to minimize any impact on State and local highway agencies. This period will allow for replacement of existing signs after their normal service life. This change is effective immediately for new sign installation.

It was also suggested that the text in the GUIDANCE paragraph of Section 9B.15 be revised to remove the distances stated for low and high speed roadways and refer the reader to Table 2C–3 which states the guidelines for advance placement of warning signs. The FHWA agrees with this recommendation and has deleted the duplicate language.

254. In Section 9B.16, the FHWA received no negative comments on the proposed text under OPTION, published at 62 FR 1364 on January 9, 1997. The text is modified to clarify that the Share the Road word message plaque (W16–1) may be used in conjunction with the W11–1 Bicycle Crossing sign. One comment was received suggesting a picture of the sign be added. This sign has been added to the page with warning signs.

The SUPPORT paragraph found in Section 9B.20 Warning Signs is relocated to 9B.16 Other Bicycle Warning Signs in order to consolidate references to other warning signs.

255. In Section 9B.18 Bicycle Route Markers (referenced in the NPA as Section 9B.17), the FHWA is changing the GUIDANCE which recommends that the M1–8 marker should be used to establish a unique designation for a State or local bicycle route to an OPTION. The FHWA did not receive any comments opposing this proposal.

The NCUTCD recommended that the M1–9 Bicycle Route Marker that is shown in the NPA be revised to be consistent with the M1–9 design depicted in the ''Standard Highway Signs'' [19] book. The M1–9 design shows the route number above and the bicycle below which improves the legibility of the route number. The FHWA agrees with this recommendation, and has modified the M1–9 bicycle route marker.

256. In Section 9B.19 Destination Arrow and Supplemental Plaque Signs for Bicycle Route Signs, the NCUTCD recommended that the discussion of color of the M7–1 through M7–7 signs be stated as a STANDARD instead of GUIDANCE. The FWHA agrees and the discussion of sign colors is changed to a STANDARD to ensure uniformity.

257. In Figure 9B–2, the title has been revised by replacing the word ''typical'' with ''example'' and now reads ''Example Signing for the Beginning and

[19] ''Standard Highway Signs,'' FHWA, 1979 Edition is included by reference in the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). It is available for purchase from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250–7954. It is available for inspection and copying as prescribed at 49 CFR part 7.

End of a Bicycle Route'' since this may not be considered a ''typical'' drawing. Other modifications to the figure are made on comments received, including removing the crosswalk lines, extending the centerline through the roadway, adding a curb line at the beginning/end of the bicycle route, and extending the size of the arrow sign (M7–1) to match the D11–1 sign.

258. Figure 9C–3, ''Typical Signing for the Beginning and End of a Bikeway of a Preferential Bicycle Lane,'' is removed from the MUTCD. The NCUTCD submitted a figure that shows recommended signing and markings for bicycle lanes combined on one figure. The FHWA agrees with this concept, therefore a new Figure 9C–5, ''Typical Pavement Marking for Bicycle Lanes on Two-way Street,'' is added with accompanying text to Chapter 9C MARKINGS.

259. The FHWA received no objections to the proposed language in Section 9C.02 regarding pavement markings for bicycle facilities. The text in GUIDANCE is modified to include all bicycle facilities, not merely bicycle lanes. Also, the text in Section 9C.02 regarding ''pavement marking materials that will minimize loss of traction under wet conditions'' is changed to a more generalized statement since some materials may be slippery to bicyclists when dry as well as wet.

260. The FHWA received no objections to the proposal in Section 9C.03 to change the language from GUIDANCE to OPTION for using a solid white line to separate different types of users on shared use paths. The proposed change is adopted.

261. In Section 9C.04, the title now reads ''Markings for Bicycle Lanes'' in order to be consistent with the revised definition of this term. It was recommended that the word ''preferential'' be deleted throughout Part 9 to be consistent with the language found in the ''Guide for the Development of Bicycle Facilities,'' 1999 edition, AASHTO.[20] This was adopted. Also, the proposed amendment to Section 9C.04 included text requiring signs to be used with preferential lane symbols. Commenters suggested deleting this text from this section since it is covered in Section 9B. The FHWA believes requiring the use of these signs is of importance and is including the proposed text in Section 9C.

The FHWA is adding a GUIDANCE statement to indicate how bicycle lanes are specifically defined by marking. This paragraph reads ''Longitudinal pavement markings should be used to define bicycle lanes.''

Also in Section 9C.04, the FHWA is changing the STANDARD so that both markings and signs are mandatory. Use of pavement markings only would not alert drivers to the presence of the lane to the same extent as markings and signs together would, especially in inclement weather conditions.

Three commenters found the language proposed in Section 9C.04 regarding the placement of bicycle lane symbols immediately after an intersection confusing. The FHWA is revising the text to include maximum distance between markings. The sentence reads ''If used, the bicycle lane symbol shall be placed immediately after, but not closer than 20m (65 ft) from the cross road, or other locations as needed.''

262. Several comments were received regarding Figure 9C–4, ''Intersection Pavement Markings—Designated Bicycle Lane with Left Turn Area, Heavy Turn Volumes, Parking, One-way Traffic, or Divided Roadway.'' The FHWA is adopting a figure submitted by the NCUTCD which more clearly shows recommended signs and symbols for a bicycle lane. Several comments were received regarding Figures 9C–7, Typical Bicycle Lane Treatment at Parking Lane into Right Turn Only Lane'' and 9–8, ''Typical Bicycle Lane Treatment at Right Turn Only Lane.'' The figure legends that were proposed in the NPA are revised and corrected.

263. In Section 9C.06, the FHWA is expanding the discussion of markers on shared use paths in the STANDARD paragraph and is adding text to be consistent with the text found in Section 3C.02.

264. The FHWA's proposal to add a separate Section 9C.07 to cover the discussion on pavement markings used for obstruction received no objections, however, the title is simplified to ''Pavement Markings for Obstructions.''

The SUPPORT statement in Section 9C.07 is modified by changing the word ''condition'' to ''obstruction'' to better define the application of this marking. The second sentence in the statement is deleted because such obstruction may not always be visible to bicyclists, and may lead to the marking not being used in locations where it is appropriate.

The GUIDANCE statement in Section 9C.07 is revised to make the marking applicable to obstructions other than drainage grates, and to specify that such markings should be used specifically for hazards near the roadway edge and not in the center of the roadway. The sentence reads ''In roadway situations where a drainage grate or other roadway obstruction that is inappropriate for bicycle travel cannot be eliminated, white markings applied as shown in Figure 9C–7 should be used.''

265. In Section 9D.02 Signal Operations for Bicycles, one commenter recommended combining the discussion on visibility requirements with the discussion on signal operations for bicycles and using the term ''visibility-limited signal faces.'' There were no other negative comments received. One commenter recommended revising the language in the second paragraph. The FHWA agrees, and the text is revised to read ''On bikeways, the needs of bicyclists shall be considered when setting signal timing.''

266. Modifications are made to several of the figures in Part 9 based on comments received. The Figure 9C–5 (NPA Figure 9–6) is divided into two figures based on comments received from the NCUTCD. The top two diagrams are numbered and titled ''Figure 9B–3. Typical Signs and Marking for Shared-Use Paths.'' The bottom right diagram on NPA Figure 9–6 is deleted because it is not considered necessary. The bottom two diagrams remain and are numbered and titled ''Figure 9C–6. Optional Word and Symbol Pavement Markings for Bicycle Lanes.''

A new figure is added, numbered and titled ''Figure 9C–2. Center Line Markings for Shared-Use Paths.'' This figure depicts centerline and obstruction markings for paths. This figure is added to more clearly show how to divide a shared use path of sufficient width into two opposing lanes and how to delineate an obstruction.

The NPA Figure 9–9 is replaced with a figure that was submitted by the NCUTCD and is renumbered and titled ''Figure 9C–7. Obstruction Pavement Marking.'' This figure is also found in AASHTO's ''Guide of Development of Bicycle Facilities,'' and clearly shows marking details and taper rates.

267. As proposed in Part 9C of the NPA, the FHWA is deleting the preferential lane symbol (diamond) for bicycle signs and pavement markings. The American Traffic Safety Services Association commented that the 7 to 10 year phase-in is too long and should be shortened to 3 to 5 years if the use of the diamond symbol on preferential lanes has caused confusion among the public. The FHWA agrees that the use of the diamond symbol on preferential lanes is confusing and with ATSSA's suggestion requiring that all new projects comply now. The FHWA agrees

[20] The ''Guide for the Development of Bicycle Facilities,'' 1999 edition, AASHTO, is available for inspection as prescribed at 49 CFR part 7. It may be purchased from AASHTO, 444 North Capitol Street, NW., Suite 249, Washington, DC 2001, or electronically at *http://www.aashto.org.*

that the 7 to 10 year phase-in is excessive and is revising the proposed phase-in period to 6 years. This change takes effect immediately for new installations.

Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings

The FHWA received 381 comments from 46 commenters concerning part 10. Only the technical (not editorial) comments are addressed in this discussion. The notice of proposed amendments (NPA) was published at 64 FR 33806 on June 24, 1999.

268. Part 10 is added to the MUTCD. The FHWA received 5 comments supporting the addition of Part 10 to the MUTCD.

269. In Section 10A.01 Introduction, a new paragraph 3 is added under the SUPPORT statement to read: ''An initial educational campaign along with an ongoing program to continue to educate new drivers is beneficial when introducing light rail operations to an area and, hence, new traffic control devices.'' This paragraph is added to address docket comment concerns about road users' comprehension of new traffic control devices that pertain to light rail operation.

Also in this section, a new paragraph 5 under STANDARD is added to read: ''Where light rail transit and railroads use the same track or adjacent tracks, the traffic control devices, systems, and practices for railroad crossings shall be used. (See Part 8).'' This paragraph is added based on review of docket comments concerning the use of the W10–6 sign (light rail transit advance warning sign) proposed to be added in Part 10 versus the W10–1 sign (highway-rail advance warning sign) that is required in Part 8. This paragraph clarifies that the traffic controls described in Part 8 have precedence when a track or adjacent tracks are used by both heavy and light rail.

The FHWA has removed from this section proposed paragraphs 4 (STANDARD) and 5 (OPTION) from the 1999 NPA, regarding applicability of Part 10 to only new and modernized locations and when consistent with Federal and State laws and regulations. The compliance date for automatic gates, flashing-light signals and blank-out signs is 5 years after the effective date of this final rule. This 5-year phase-in period for automatic gates, flashing-light signals and blank-out signs is given in order to not cause an undue economic burden on the affected jurisdictions.

270. In Section 10A.05 Temporary Traffic Control Zones, the FHWA is changing paragraph 7 concerning lane restrictions or the performance of flagging near highway-light rail transit grade crossings from GUIDANCE to STANDARD to be consistent with the STANDARD paragraph in Section 8A.05 Temporary Traffic Control Zones. This change will require that lane restrictions, flagging or other operations not be performed in a manner that would cause vehicles to stop on the tracks with no means of escape.

271. In Chapter 10C Signs, Illumination and Markings (titled ''Signs, Pavement Markings, and Illumination'' in the 1999 NPA), the FHWA is reordering the sections to follow other parts of the Manual (regulatory, warning, information, illumination and pavement markings). Within the regulatory category, the FHWA reordered the sections as: at the crossing, near the crossing, and then signs for mixed-use alignment operation. The new order is: 10C.01 Introduction, 10C.02 Look Sign, 10C.03 STOP or YIELD Sign, 10C.04 DO NOT STOP ON TRACKS Sign, 10C.05 STOP HERE ON RED Sign, 10C.06 Light Rail Transit-Activated Blank-Out Turn Prohibition Signs, 10C.07 Divided Highway With Light Rail Transit Crossing Sign, 10C.08 No Vehicles On Tracks Sign, 10C.09 Light Rail Transit Only Lane Signs, 10C.10 Do Not Pass Light Rail Transit Sign, 10C.11 Highway-Rail Advance Warning Signs, 10C.12 Light Rail Transit Approaching-Activated Blank-Out Warning Sign, 10C.13 Light Rail Station Sign, 10C.14 Illumination at Highway-Light Rail Transit Crossings, and 10C.15 Dynamic Envelope Delineation Markings.

272. In Section 10C.01 Introduction, the proposed OPTION paragraph in the 1999 NPA, concerning the use of smaller than standard size signs, is removed. A commenter stated that unlike bicycle facilities, for light rail transit, sign sizes and placement similar to standard highway signs are required because of the similarity of motor vehicle driver needs. The FHWA agrees with this comment and is removing the OPTION so that the signs conform to Chapter 2A as stated in the STANDARD. Since this issue is provided for in Chapter 2A, it should not be stated as an OPTION in this section.

273. Proposed Section 10C.02 Light Rail Transit Warning Signs (W10–6, W10–6a) has been removed and replaced with a new Section 10C.02 entitled, ''LOOK Sign (R15–8).'' Based on docket comments received about the W10–6 light rail transit advance warning sign and review of the section, the FHWA agrees that allowing the use of a warning sign at crossings to supplement the Crossbuck (Figure 10–6 in the 1999 NPA) is not appropriate (warning signs are used in advance to warn the road user of an approaching unexpected condition, not at the condition). The FHWA agrees to include the option to use the LOOK sign (R15–8) as a supplemental panel to the Crossbuck at light rail transit grade crossings. The LOOK sign is currently an OPTION allowed in Part 8, Traffic Control for Highway-Rail Grade Crossings; therefore, to be consistent the FHWA is adding it to Part 10.

The FHWA received several comments in response to the proposal to add a new standard Light Rail Transit Warning Sign (W10–6) and a Light Rail Transit Both Directions Warning Sign (W10–6a, W10–6b). Three docket commenters stated that the W10–1 sign is already a universally accepted advance warning sign standard at all highway-rail grade crossings. They stated that the new light rail transit warning sign provides the potential for confusion and may fail to elicit the appropriate degree of caution. In an effort to create uniform standards, they recommend the W10–1 sign be installed instead of W10–6. One commenter wanted this sign to be an OPTION instead of a requirement, thinking that at signalized intersections with light rail transit crossing one leg the placement of the sign would be subject to different interpretations as to what approaches qualify for such an installation. One commenter suggested that the W10–6 and the W10–6a be round to match the shape of the W10–1. Another commenter stated that the distinction provided between the W10–6 and the W10–6a and W10–6b appears to be unnecessary and potentially hazardous and that drivers should be alert to the possibility of bi-directional rail traffic at all crossings.

In response to the above comments, the FHWA is removing the section referenced in the 1999 NPA as 10C.2 Light Rail Transit Warning Signs (W10–6, W10–6a) and replacing it with Section 10C.11 Highway-Rail Advance Warning Signs (W10–1, W10–2, W10–3, W10–4). The W10–1 sign is already a universally accepted advance warning sign standard at all highway-rail grade crossings and is currently required in Part 8 of the MUTCD. This will remove the potential for confusion and the potential of not achieving the appropriate degree of caution. The compliance date removal of existing W10–6 series signs is 5 years after the effective date of this final rule. This 5-year phase-in period for removal of existing W10–6 series signs is given in order to not cause an undue economic burden on the affected jurisdictions.

274. In Section 10C.03 STOP or YIELD Signs (R1–1, W3–1, R1–2, W3–2), two commenters suggested the wording on the use of STOP AHEAD or YIELD AHEAD signs be changed to match that in Section 2C.25 (use on approaches with insufficient sight distance). The FHWA agrees with these comments and made text changes to reflect this change.

One commenter requested a change from a STANDARD to an OPTION, and another commenter requested a change from a STANDARD to a GUIDANCE when STOP or YIELD signs are used to control the highway-light rail transit crossing. The FHWA disagrees that the STANDARD should be changed to an OPTION or a GUIDANCE. A clarifying phrase is added to the end of the first paragraph that indicates the STOP AHEAD and YIELD AHEAD signs shall be installed in accordance with Section 2C.25. Section 2C.25 indicates that these signs shall be installed if there is a sight distance problem.

Six commenters suggested the addition of two new characteristics for deciding whether to use a STOP or YIELD sign. The FHWA will consider the proposal for adding two new characteristics for deciding if a crossing should use a STOP or YIELD sign in the future.

One commenter indicated that proposed paragraph 4 in the 1999 NPA (covering not installing a STOP or YIELD sign near a crossing such that vehicles might extend into the path of an approaching light rail transit vehicle) is in conflict with State laws concerning when a light rail crosses a local road that intersects a State highway, the local road is required to stop before entering the highway. The FHWA agrees and is removing this sentence and replacing it with a new paragraph that gives GUIDANCE about posting a DO NOT STOP ON TRACKS sign if a STOP or YIELD sign is installed near a crossing where vehicle queues are likely to extend into the path of a light rail transit train.

One commenter took exception to the GUIDANCE recommending that STOP or YIELD signs be erected on a separate post. He stated that this guidance was unnecessarily restrictive and that there is no reason why a STOP sign could not be mounted on an existing fixture (*e.g.,* a street light pole) if that fixture is in a suitable position. He said that the other requirements of this paragraph are already covered by Part 2, and the entire paragraph 4 (referenced in the 1999 NPA as paragraph 3) should be deleted. The FHWA agrees that STOP and YIELD signs may be installed on another suitable post and is changing that paragraph to an OPTION instead of deleting it.

After review of this section, the FHWA is removing proposed paragraph 5 in the 1999 NPA, (OPTION) regarding the option to install a STOP or YIELD sign as an interim measure while waiting for active devices to be installed and operational. This paragraph is no longer appropriate because Section 10B.01 Introduction and other paragraphs in Section 10C.03 give the authority to use STOP and YIELD signs at crossings for other than interim measures.

275. In Section 10C.06 Light Rail Transit-Activated Blank-Out Turn Prohibition Sign (R3–1a to R3–2a) (referenced in the 1999 NPA as Section 10C.04), a commenter questioned the appropriateness of transit-activated turn prohibitions. His experience with such blank-out signs showed that road users often fail to note and respond to the activation of such signs. He found this problem significant in cases of high volumes or permissive left turns across heavy traffic. He recommended using traffic signal phasing with protected/prohibited operation instead of these signs. The FHWA disagrees. These signs are appropriate for use, and road users are helped by and do respond to the message. If protected-only left-turn phasing is used, it would not be necessary to install a blank-out turn-prohibition sign for the left-turn movement.

One commenter objected to the blank-out sign because he said the detail on the sign cannot be reproduced on a fiber optic sign. A problem was also found with adding the railroad tracks to the sign because it may weaken turn prohibitions where no specified hazard is identified on the sign. The FHWA disagrees with this comment. There are a number of different technologies that can be used to convey this message if the use of fiber optic technology for this sign is in question.

After a review of this section, the FHWA realized that the GUIDANCE given in proposed paragraph 2 of the 1999 NPA unduly prohibited the use of this sign on mixed-use alignments. In proposed paragraph 3 of the 1999 NPA, the words ''on a semi-exclusive alignment'' also unduly prohibited the use of this sign on mixed-use alignments. The FHWA is removing paragraph 2 from GUIDANCE and the words, ''on a semi-exclusive alignment'' from paragraph 3 to allow the light rail transit-activated blank-out turn prohibition signs to be used in mixed-use and semi-exclusive alignments.

276. In Section 10C.08 No Vehicles on Tracks Sign (R15–6, R15–6a) (referenced in the 1999 NPA as Section10C.07), several comments were received as well as the results from the FHWA research study, ''Evaluation of Selected Potential MUTCD Signs.'' [21] One commenter requested that the use of this sign be extended to locations where the tracks are only separated by pavement markings. The FHWA agrees with this comment and is making the appropriate text changes to this section.

Another commenter suggested that the use of this sign is more appropriate when adjacent traffic lanes are separated from the transit lane only by striping or lane designation, and that it is obvious when curbs are used that vehicles are prohibited from driving on the tracks and the curb itself provides a deterrent. The FHWA partially agrees with this comment. However, we believe an important application of this sign is at intersections in order to inform drivers not to proceed down the wrong (light rail transit) side of the curb.

A third commenter thought the sign would call attention to the tracks and be misinterpreted as indicating traffic may travel on the exclusive roadway as long as they do not drive on the tracks. He also suggested using turn restrictions and DO NOT ENTER signs instead. The FHWA disagrees with the suggestion to substitute a DO NOT ENTER sign for a No Vehicles on Tracks symbol sign—it is important to tell drivers why they are not permitted to enter or turn onto the light rail transit track area, as some drivers intentionally violate turn restriction signs when they think that they will not be putting their safety in jeopardy. When the guideway is not paved, most agencies will not exercise their option to use this sign. However, the FHWA agrees that in some instances a DO NOT ENTER (R5–1) sign is appropriate. The FHWA is removing the phrase from paragraph 1 (SUPPORT) that suggests the No Vehicles on Tracks sign is appropriate for streets solely for light rail transit. The FHWA is adding as the new second paragraph in Section 10C.08 the following GUIDANCE language: The DO NOT ENTER (R5–1) sign should be used where a road user could wrongly enter a light rail transit only street.'' A DO NOT ENTER conveys the message better for this situation.

The fourth commenter recommended a word message sign be used instead of the symbol sign because the symbol is confusing. The FHWA disagrees that only a word message sign (DO NOT DRIVE ON TRACKS, R15–6a) should be

[21] ''Evaluation of Selected Potential MUTCD Signs,'' Publication Number FHWA–RD–00–053, is available from National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

used. However, the FHWA is adding an optional word message sign that could be used in lieu of the symbol sign based on this docket comment and results from the FHWA symbol sign research.[22]

277. In Section 10C.09 Light Rail Transit Only Lane Signs (R15–4 Series) (referenced in the 1999 NPA as Section 10C.05), one commenter suggested that the use of the ''Light Rail Transit Only Lane'' regulatory (R15–4 series) sign in mixed alignments (an alignment where motor vehicles and light rail transits operate in the same lane) does not appear to be appropriate. He recommended that the OPTION paragraph be revised. The FHWA disagrees with this comment because the purpose of these signs is for mixed-use alignments.

278. In Section 10C.10 Do Not Pass Light Rail Transit Sign (R15–5) (referenced in the 1999 NPA as Section 10C.06), the FHWA conducted a symbol sign research evaluation.[23] Based on the results of that study, an optional word message sign is added: ''DO NOT PASS STOPPED TRAIN'' (R15–5a).

279. In Section 10C.12 Light Rail Transit Approaching-Activated Blank-Out Warning Sign (W10–7) (referenced in the 1999 NPA as Section 10C.11), one commenter found the proposed W10–7 sign to be unclear and had the potential to be confused with the I–12 sign. The commenter believes that by shape and color, the W10–7 sign appears to be regulatory rather than warning. He also believes that standard railroad warning signs and exclusive signal phases appear to be adequate without the W10–7 sign. The FHWA partially agrees and is adding descriptive wording to the text to reinforce that the W10–7 sign is a warning sign.

Six commenters suggested that the proposed third paragraph be changed from an OPTION to GUIDANCE, recommending these signs be used at traffic signals where traffic turning across tracks is not controlled by exclusive signal phases. The FHWA disagrees because many agencies do not want to use these signs. Changing this to GUIDANCE would force these agencies to justify their decision to not use a device that should only be an OPTION.

One commenter suggested that a special sign is not needed for this situation because the road user does not distinguish between heavy and light rail. The FHWA disagrees because there is no similar sign for heavy rail.

One commenter stated that the proposed format of the blank-out sign does not convey a message that the light rail transit car may be approaching from behind the driver. Also, the use of a verbal message format should be an OPTION. The FHWA disagrees. This sign is not required, but is a device the traffic engineer may use. The FHWA is adding descriptive words to the text to improve this section.

280. In Section 10C.14 Illumination at Highway-Light Rail Transit Crossings, the FHWA is removing proposed paragraph 2 of the 1999 NPA, (STANDARD) of this section, dealing with location of luminaires, because it is already covered in paragraph 2 (referenced in the 1999 NPA as paragraph 3), which references a recommended practice for roadway lighting.

281. In Section 10C.15 Dynamic Envelope Delineation (referenced in the 1999 NPA as Section 10C.13), one commenter recommended deleting the proposed fifth paragraph of the 1999 NPA where GUIDANCE is provided on delineation along the roadway between intersections in mixed-use alignments. He believed that this practice could confuse road users and diminish their respect for the distinctive paving at locations where its purpose is to deter vehicle encroachment into a reserved trackway. The FHWA disagrees because delineation of the dynamic envelope along the roadway in mixed-use alignments will better communicate to road users where to expect the light rail transit train. This is especially important in mixed-use alignments because road users may have a greater number of possible crossings with a light rail transit train (depending on lane restrictions). However, the FHWA is changing this paragraph to an OPTION so the decision of whether to delineate the dynamic envelope in mixed-use alignments can be made based on local conditions.

One commenter suggested changing the proposed sixth paragraph of the 1999 NPA (on extending the markings across all highway-light rail transit crossings) from GUIDANCE to OPTION because it may be more appropriate to use a stop line so motorists don't pull up to the dynamic envelope marking thinking it serves as a stop line and be in the way of a descending gate. The FHWA agrees with changing this paragraph to an OPTION; and includes the drawing of the dynamic envelope pavement marking for a semi-exclusive alignment (currently shown in Figure 8B–4 in Part 8) in Figure 10C–2. The FHWA is modifying the length of the pavement marking in that figure to extend across the width of the entire roadway so it will not be confused with a stop line.

One commenter suggested that markings should only be installed when an engineering study demonstrates a need to define the envelope. The FHWA agrees with this suggestion and is changing paragraph 2 of this section to be an OPTION in the MUTCD. The FHWA also is adding a phrase to the end of paragraph 7 explaining that if used, markings should extend across all crossings, ''unless a four quadrant gate system (see Section 10D.04) is used.''

One commenter stated that additional guidance is needed on pavement marking colors, line style, etc. The FHWA agrees and is modifying paragraph 3 to add the words, ''and shall be a 100 mm (4 in) normal solid white line'' to the end of the paragraph. The current text refers to Part 3, but there is no mention of the size and colors of dynamic envelope delineation in Part 3.

282. In Section 10D.01 Introduction, one commenter stated that, based on experience with light rail transit operating speeds, the speeds mentioned in paragraph 6 (referenced in the 1999 NPA as paragraph 2) need to be changed from a maximum speed of 55 mph to a maximum speed of 65 mph. The FHWA agrees and is making this change to the text.

Another commenter suggested deleting proposed paragraph 4 of the 1999 NPA (the last paragraph in SUPPORT) and proposed paragraph 5 of the 1999 NPA (the first paragraph in GUIDANCE) because they do not make any substantive contribution to Part 10. The FHWA agrees that these paragraphs are unnecessary and is removing them.

Six commenters suggested paragraph 5 (referenced in the 1999 NPA as paragraph 7), on audible devices, be changed from OPTION to GUIDANCE in order to provide adequate warning for the visually impaired community and to meet the American with Disabilities Act (ADA) Requirements. The FHWA disagrees because the ADA requirements do not require audible devices at every grade crossing. The FHWA believes that changing paragraph 5 to GUIDANCE could mean significant financial burdens to State and local governments. In addition, the FHWA believes that the jurisdictions that need these devices will conduct the appropriate engineering studies and install these devices. FHWA will investigate this issue further.

283. The FHWA is adding two new sections to Chapter 10D Highway-Light Rail Transit Active Traffic Control Grade Crossing Systems. The FHWA is

[22] ''Evaluation of Selected Potential MUTCD Signs,'' FHWA, 2000 (Publication No. FHWA–RD–00–053)

[23] Ibid.

adding Section 10D.02 Four Quadrant Gate Systems to mirror the current wording in Part 8 (Traffic Control for Highway-Rail Grade Crossings) to govern four quadrant gate systems, if used. This decision is based on the inclusion of a section on four quadrant gates in Part 8 and the current use of four quadrant gates at highway-light rail transit grade crossings. The FHWA is adding Section 10D.04 Flashing-Light Signals, to properly categorize some of the wording from Section 10D.03 Automatic Gates (referenced in the 1999 NPA as Section 10D.02) and to cover the aspects of flashing-light signals that are unique to light rail transit.

284. In Section 10D.03 Automatic Gates (referenced in the 1999 NPA as Section 10D.02 Traffic Gates), one commenter suggested that the title should be changed from ''Traffic Gates,'' to ''Automatic Gates'' because the term ''Automatic Gates'' is used in Part 8. The FHWA agrees and has changed the title to ''Automatic Gates'' for this section (to match Part 8).

Another commenter suggested the FHWA not use the term ''automatic gate'' since most, if not all, gates at highway-rail grade crossings and highway-light rail transit grade crossings are operated by power and controlled by electrical circuits that make them automatic. However, there was concern that the term ''traffic gate'' failed to distinguish between Barrier (Resistance) Gates, and Warning Gates. He suggested that ''traffic gates'' be replaced by ''barrier traffic gates.'' The FHWA disagrees because, before changing to a term other than ''automatic gates'' (as used in Part 8), the development of new technical definitions needs to be addressed by the rail and traffic engineering professions.

Six commenters suggested changing paragraph 3 (referenced in the 1999 NPA as paragraph 2) from a GUIDANCE to a STANDARD. They stated that industry experience has found gated light rail transit grade crossings safer than ungated crossings, especially at speeds above 60 km/h (35 mph). In addition, they stated that the California Public Utilities Commission requires that gates be used where light rail transit speeds exceed 60 km/h (35 mph). Where light rail transit speeds exceed 60 km/h (35 mph), the commenters said the need for gates is due to both the increased stopping distance required for light rail vehicles traveling over this speed and the increase in property damage, injuries and fatalities reported when light rail transit collisions occur at speeds above 60 km/h (35 mph). The commenters also say this is standard design practice for all new light rail transit systems in the United States, and so would not create an additional financial burden for light rail transit systems. The FHWA disagrees with changing this paragraph to a STANDARD at this time. Additionally, the USDOT Highway/Rail Grade Crossing Technical Working Group is developing a report that may recommend changes in GUIDANCE at active highway-rail grade crossings. Based on that report, the FHWA will consider whether changes to Part 10 are needed.

Six commenters suggested that paragraph 5 (referenced in the 1999 NPA as paragraph 4), concerning the OPTION to install automatic gates and flashing-light signals when the highway-light rail transit grade crossing is not at an intersection and when light rail transit speeds greater than 40 km/h (25 mph), be changed from OPTION to STANDARD because of industry experience. The commenters state that motorists are not expecting to stop at mid-block locations, and as such the need for traffic gates is greater at lower light rail transit speeds to provide a physical barrier between the motorist and the tracks. The FHWA disagrees with changing this paragraph to a STANDARD. This proposed change would need to be part of a future notice of proposed amendment to allow the public a chance to comment. Additionally, the USDOT Highway/Rail Grade Crossing Technical Working Group is developing a report that may lead to changes in GUIDANCE at active crossings. After reviewing that report, the FHWA will consider whether changes are needed to Part 10.

Two commenters questioned the restriction of light rail transit speeds in paragraph 5 (referenced in the 1999 NPA as paragraph 4). The FHWA disagrees with these objections because paragraph 5 defines when traffic control signals may be used instead of flashing-light signals or gates. That paragraph is not an attempt to control speeds of light rail transit operations or drivers of other motor vehicles. The criteria listed in this paragraph are not speed limits. Paragraph 5 contains valuable information to most agencies, however it is not a STANDARD. This paragraph allows a particular agency to use traffic control signals at a grade crossing that has light rail transit speeds in excess of 60 km/h (35 mph). This paragraph does not limit light rail transit speeds; it discusses the use of gates depending on speed.

285. In Section 10D.05 Traffic Control Signals (referenced in the 1999 NPA as Section 10D.03). One commenter suggested a change to paragraph 3, GUIDANCE, saying 60 meters (200 ft) is inadequate for desirable interconnection. He recommended 200 m (650 ft) and recommended that this be a STANDARD requirement. The FHWA disagrees because 60 meters (200 feet) is the distance used in other parts of the MUTCD for guidance related to railroad preemption.

Six commenters suggested two new paragraphs (concerning the use of traffic control signals at highway-light rail transit grade crossings based on an engineering study, light rail transit speeds, and traffic control devices at the crossings) be added as OPTIONS. The FHWA partially agrees, but is only adding the phrase, ''at a location other than an intersection,'' to paragraph 9 of Section 10D.05. The remainder of the suggested new paragraph will not be added because the FHWA does not want road users to disregard the importance of traffic signals. If traffic signals are placed at grade crossings where they would display GREEN for a majority of the time, there will be a disregard for traffic signals. The suggested second paragraph would conflict with Part 8.

Three commenters requested that the paragraph referenced in the 1999 NPA as paragraph 7 (exclusive only turn phase with arrow indications) be changed from OPTION to GUIDANCE. They stated that industry experience has demonstrated that, at intersections with exclusive turn lanes parallel to the tracks, a protected only turn phase should be provided to minimize the potential for a road user to run in front of a light rail vehicle approaching from behind. As a result of these docket comments, the FHWA has changed this paragraph to a STANDARD instead of the requested GUIDANCE to improve safety at highway-light rail transit grade crossings. This paragraph was reworded to require a red indication to be displayed so that vehicles are prohibited from turning onto the tracks when trains are approaching or occupying the crossing. The FHWA also has moved this paragraph into the Traffic Signal Preemption Turning Restrictions section (now renumbered as Section 10D.06).

286. In Section 10D.06 Traffic Signal Preemption Turning Restrictions (referenced in the 1999 NPA as Section 10D.04), two commenters opposed the restriction of turn movements at nearby signalized intersections. They believed the restriction should be changed to provide for an engineering study of site conditions. The FHWA disagrees. Motorists, pedestrians, and bicyclists should not be trapped when crossing the tracks due to a lack of storage distance and should not run into the path of an oncoming train.

287. In Section 10D.07 Use of Traffic Control Signals for Control of Light Rail Transit Vehicles at Grade Crossings (referenced in the 1999 NPA as Section 10D.05), six commenters recommended that paragraph 3 (referenced in the 1999 NPA as paragraph 2), concerning allowing standard traffic signals to be used for light rail transit signals, be deleted. They stated that industry experience has demonstrated that motorist confusion occurs if standard traffic signal indications are used in lieu of special light rail transit signal indications. They stated that existing systems that have standard traffic signals in place to control light rail transit movements will not be affected by this because of the provisions in the 1999 NPA in paragraphs 4 and 5 in Section 10A.01. The FHWA disagrees with deleting paragraph 3. There is no reason why green-yellow-red signals cannot be used to control light rail transit traffic, especially since the GUIDANCE (erroneously shown as the second paragraph of SUPPORT in Section 10D.5, paragraph 6 of the 1999 NPA) states that the indications should be positioned so as not to be visible to motorists. In addition, proposed paragraphs 4 and 5 in the 1999 NPA for Section 10A.01 have been deleted. The FHWA has changed this GUIDANCE concerning positioning of indications to a STANDARD in paragraph 4, to emphasize the importance of positioning green-yellow-red signals.

One commenter recommended that the second sentence in paragraph 5 (referenced in the 1999 NPA as paragraph 3), concerning termination of the light rail transit phase, be moved to GUIDANCE. He indicated that it is not always practical to terminate the light rail phase until after the light rail transit vehicle has cleared the crossing. The FHWA disagrees because we believe that modern electronics technology can accomplish this STANDARD and because it does not seem safe to terminate a light rail transit phase prior to the light rail transit clearing the crossing.

Another commenter also recommended deletion of the second sentence in paragraph 5 (referenced in the 1999 NPA as paragraph 3), concerning termination of the light rail transit phase, because this requirement would preclude the use of fixed time traffic controllers on light rail transit intersections. The FHWA disagrees because of the hazard associated with the light rail transit phase terminating prior to the clearing of the crossing and because actuated controller equipment can be used. In addition, a pre-timed controller set up with special cabinet wiring that allows stop-timing on the light rail transit phase would satisfy this STANDARD.

Six comments were received regarding paragraph 2 (referenced in the 1999 NPA as paragraph 4) and Figure 10D–1 (numbered as Figure 10–1 in the 1999 NPA). Two commenters suggested the GUIDANCE was too specific regarding the white bars and that it is not a proper function of the Manual to dictate the specifics of railway signaling. They stated that green, yellow and red signal indications are universally recognized, and other coding systems increase the opportunity for error. One commenter opposed the language on the use of white bars, because white bars are used for track switching operations, and a switching operation signal should be different from a stop and go signal. He recommended adopting the California Traffic Control Devices Committee (CTCDC) language of a T shape, or a vertical or horizontal bar for the Go signal. Another commenter said the CTCDC permits a shape and a triangle in addition to the bars. He recommended that the triangle and T shape be added to the list of signal indications. One commenter suggested that an amber color should be allowed for the horizontal bar with a white color for the vertical bar. Another commenter recommended deletion of the language governing diverging routes in Figure 10D–1. Based on these docket comments, the FHWA is changing this paragraph to an OPTION and is making it less specific regarding railway signaling. The FHWA is also modifying Figure 10D–1 to say ''Typical,'' not ''Recommended.''

Two commenters opposed the 8 ft separation between the light rail transit signals and traffic signals described in paragraph 7 (referenced in the 1999 NPA as paragraph 8). They suggested a minimum 3 ft separation. One reasoned that the separation is unnecessary since the signals are required to be distinctly different, and such a requirement could force the placement of a light rail transit signal into a sub-satisfactory position. The other commenter stated that since the light rail transit signal and traffic signal displays are dissimilar such a restriction would correspond to requiring a pedestrian signal and vehicular traffic signal to be separated by 8 feet. The FHWA partially agrees but believes some separation is desirable. Therefore, the FHWA is changing the requirement to a 1m (3 ft) separation.

288. In Section 10D.08 Pedestrian and Bicyclist Signals and Crossings (referenced in the 1999 NPA as Section 10D.06 Non-Motorist Signals and Crossings), one commenter suggested that the term ''non-motorist'' be replaced with ''pedestrian'' because ''non-motorist'' is both cumbersome and strange. The FHWA partially agrees and is changing the term ''non-motorist'' to ''pedestrian and bicyclist'' in the title of this section and throughout this section.

Six commenters recommended the first sentence of proposed paragraph 3 of the 1999 NPA, concerning the use of flashing-light signals, be changed from OPTION to GUIDANCE. The FHWA agrees and is changing this sentence to GUIDANCE, with minor modifications to the sentence to respond to another comment.

One commenter suggested that paragraph 4 be changed to recommend flashing-light signals instead of gates at pedestrian crossings where an engineering study has determined sight distance is insufficient for completion of crossing prior to arrival of light rail transit, or where light rail transit speeds are greater than 60 km/h (35mph). The commenter suggested gates be allowed as an OPTION if flashing-light signals are not sufficient. The FHWA agrees that flashing-light signals should be added before or with gates, and is making appropriate text changes to paragraph 4.

One commenter indicated that the text and the figure reference in paragraph 4 disagree. The commenter suggested text be added to indicate that a traffic gate may be used as a combination vehicle/pedestrian control device by placing the gate behind the sidewalk, keeping in mind that the flashing-light signals need to be clearly visible to road users and the lights shall not be obstructed by walls, buildings, trees, etc. The commenter further recommended another restriction for such an installation should be that the gate arm length not be excessive, as determined by industry standards. The FHWA partially agrees; however, gates do not necessarily need to be placed behind the sidewalk. Figure 10D–3 shows this type of combination vehicle/pedestrian traffic control device. The FHWA is correcting the references to the figures in this section. The third sentence suggested by the commenter referred to industry standards that the FHWA is not aware of, so that sentence is not included in the text.

The same commenter recommended that paragraph 5 would then no longer be relevant and should be deleted. The FHWA disagrees because the SUPPORT paragraph is still relevant to describe the optional gates.

One commenter suggested criteria be added to Section 10D.08 for the use of

swing gates or that paragraph 6, which mentions swing gates, be deleted. The FHWA disagrees because the swing gates are described and illustrated in an acceptable manner. The purpose of swing gates is to prevent pedestrians from entering the track area.

Another commenter recommended new figures be added to Part 10 that show light rail transit/pedestrian and bicycle crossings that take up a smaller amount of right-of-way. The FHWA disagrees because the text and figures in Part 10 do not refer to the amount of right-of-way needed for accommodating light rail transit parallel to a roadway.

One commenter stated that physically blocking the sidewalk with an automatic gate, shown in Figures 10D–3, 10D–4, and 10D–5 (numbered in the 1999 NPA as Figures 10–3, 10–4, and 10–5) can be problematic and should not be considered ''typical.'' The commenter believed that this matter is addressed sufficiently in the text and these illustrations should be deleted. The FHWA disagrees. Blocking sidewalks with automatic gates during the passage of trains or light rail transit vehicles is done all the time and is safe, not problematic.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the changes in this final rule provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and the safety of roadways at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act 5 (U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities, including small governments. This final rule adds some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in the MUTCD directly preempts any State law or regulation. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. Note that the overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and that changes made in this notice are directed at enhancing safety. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

This action does not contain a collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act of 1995

Note that the revisions directed by this action can be phased in by the States over specified time periods in order to minimize hardship. The changes made to traffic control devices that would require an expenditure of funds all have effective dates sufficiently long to allow normal maintenance funds to replace the devices at the end of the material life-cycle. To the extent the involved revisions require expenditures by the States and local governments on Federal-aid projects, they are reimbursable. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (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.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant program-transportation, Highways and roads, Incorporation by reference, Signs, and Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32 and; 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

2. Revise § 655.601, paragraph (a), to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, FHWA dated December, 2000. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC. It is available for inspection and copying at FHWA, 400 Seventh Street, SW., Room 3408, Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' web site at: *http://mutcd.fhwa.dot.gov.*

* * * * *

Issued on: December 11, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–31974 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AA98

Changes to Implement the Patent Business Goals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule and correction to final rule.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the Federal Register of September 8, 2000, revising the rules of practice in patent cases to implement the Patent Business Goals. This document corrects errors in that final rule and amends the Rules of Practice for consistency with the Patent business Goals final rule.

DATES: *Effective Date:* December 18, 2000. *Applicability date:* For fees paid prior to November 7, 2000, the two-year time period for requesting a refund is extended to expire on the later of February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((703) 305–8713) or Robert W. Bahr ((703) 308–6906), Senior Legal Advisors, or Robert J. Spar, Director ((703) 308–5107), Office of Patent Legal Administration (OPLA), directly by phone, or by facsimile to (703) 305–1013, marked to the attention of Mr. Bernstein, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Office published a final rule in the **Federal Register** of September 8, 2000 (65 FR 54604), entitled ''Changes to Implement Patent Business Goals'' (final rule). This document corrects errors in that final rule as discussed below.

The final rule is corrected to indicate that the changes to §§ 1.52(e), 1.96, and 1.821 *et seq.* concerning the submission of computer program listings and sequence listings are effective on September 8, 2000, rather than November 7, 2000.

The final rule is corrected to indicate that the time period for requesting a refund for fees paid prior to November 7, 2000, expires the later of November 8, 2000 (rather than November 7, 2002), or two years from the date the fee was paid. Since this correction will not be published until after November 7, 2000, the two-year time period for requesting a refund is extended to expire on the later of the date that is sixty days after publication of this correction notice in the **Federal Register** or the date that is two years from the date the fee was paid.

The final rule is corrected to eliminate the sentences indicating that only the paper portions of the application will be published as patent application publications or patents. Portions of an application submitted on an electronic medium under § 1.52(e) will be available (published) at least through an electronic medium.

The final rule is corrected to indicate that if continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the application data sheet will not appear in the first line of the specification in the patent. In such a situation, the continuity data will only appear on the front page of the patent.

The final rule is corrected to delete the sentence indicating that § 1.78(a)(4) is additionally amended by deletion of the term ''copending'' as a requirement for a nonprovisional application to claim priority to a provisional application. Section 1.78 was previously amended to delete the copendency requirement for a nonprovisional application claiming priority to a provisional application. *See Changes to Application Examination and Provisional Application Practice,* interim rule, 65 FR 14865, 14867, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 48, 53 (Apr. 11, 2000).

Section 1.14(h) in the final rule is corrected to refer to ''§ 1.47(c)'' rather than ''§§ 1.47(a) and (b)'' (the relevant portion of §§ 1.47(a) and (b) was transferred to new § 1.47(c)).

Sections 1.16(a) through (l), 1.17(a) through (e), (r) and (s), 1.18(a) through (c), 1.20(d) through (h) and 1.492(a) through (e) are corrected to change their reference to ''§ 1.9(f)'' to a reference to ''§ 1.27(a)'' (the substance of former § 1.9(f) was transferred to § 1.27(a)).

Section 1.20(b) is corrected to indicate that its fee is a processing fee (rather than a petition fee).

Section 1.53(c) is corrected to change its reference to ''§ 1.78(a)(3)'' to a reference to ''35 U.S.C. 119(e) and § 1.78(a)(4)'' (the substance of former § 1.78(a)(3) was transferred to ''§ 1.78(a)(4)).''

Section 1.366 is corrected to change its reference to ''§ 1.28(b)'' to a reference to ''§ 1.27(g)'' (the substance of former § 1.28(b) was transferred to § 1.27(g)).

In rule FR Doc. 00–22392, published on September 8, 2000 (65 FR 54604), make the following corrections and 37 CFR Part 1 is amended as follows:

1. On page 54604, in column 1, the sentence ''This rule is effective November 7, 2000, except that the changes to §§ 1.27, 1.78, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, and 1.760, and the removal of § 1.44 are effective September 8, 2000'' should read ''This rule is effective November 7, 2000, except that the changes to §§ 1.27, 1.78, 1.52(e), 1.96, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, 1.760, 1.821, 1.823, 1.824, and 1.825, and the removal of § 1.44 are effective September 8, 2000.''

2. On page 54608, in the sentence bridging columns 2 and 3, ''The two year time period for requesting a refund will end two years and sixty days from the date of publication in the **Federal Register** for fees paid prior to sixty days from the date of publication in the **Federal Register**, or two years from payment of the fee for fees paid on or after sixty days from the date of publication in the **Federal Register**'' should read ''For fees paid prior to sixty days from the date of publication in the

Federal Register, the two-year time period for requesting a refund will expire on the later of November 7, 2000, or the date that is two years from the date the fee was paid.''

3. On page 54621, in column 1, third paragraph, remove the sentences ''Only the paper portions of the application will, under our current procedures, be published, either as published applications or patents'' and ''The Office can thus require that certain information, such as related to an elected species, be submitted in the proper form (paper) to be printed.''

4. On page 54626, in column 3, first incomplete paragraph, the sentence ''If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the first line of the patent will be taken from the application data sheet'' should read ''If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the application data sheet will not be printed in the first line of the specification in the patent.''

5. On page 54628, in column 1, fourth paragraph, remove the sentence ''Section 1.78(a)(4) is additionally amended by deletion of the term 'copending' as a requirement for a nonprovisional application claiming priority to a provisional application in view of the 'American Inventors Protection Act of 1999.'''

§ 1.14 [Corrected]

6. On page 54658, in the first column, § 1.14, paragraph (h), line 5, correct ''§§ 1.47(a) and (b)'' to read ''§ 1.47(c)''.

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

8. Section 1.16 is amended by revising paragraphs (a) through (l) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.27(a)) $355.00
By other than a small entity $710.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)) $40.00
By other than a small entity $80.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a)) $9.00
By other than a small entity $18.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)) $135.00
By other than a small entity $270.00

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a)) $65.00
By other than a small entity $130.00

(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a)) $160.00
By other than a small entity $320.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a)) $245.00
By other than a small entity $490.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a)) $355.00
By other than a small entity $710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a)) $40.00
By other than a small entity $80.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):

By a small entity (§ 1.27(a)) $9.00
By other than a small entity $18.00

(k) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)) $75.00
By other than a small entity $150.00

(l) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a small entity (§ 1.27(a)) $25.00
By other than a small entity $50.00

* * * * *

9. Section 1.17 is amended by revising paragraphs (a) through (e), (r) and (s) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a small entity (§ 1.27(a)) $55.00
By other than a small entity ... $110.00

(2) For reply within second month:

By a small entity (§ 1.27(a)) $195.00
By other than a small entity ... $390.00

(3) For reply within third month:

By a small entity (§ 1.27(a)) $445.00
By other than a small entity ... $890.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)) $695.00
By other than a small entity ... $1,390.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)) $945.00
By other than a small entity ... $1,890.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a)) $155.00
By other than a small entity ... $310.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a)) $155.00
By other than a small entity ... $310.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a)) $135.00
By other than a small entity ... $270.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a)) $355.00
By other than a small entity ... $710.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a)) $355.00
By other than a small entity ... $710.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a)) $355.00
By other than a small entity ... $710.00

10. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a)) $620.00
By other than a small entity ... $1,240.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a)) $220.00
By other than a small entity ... $440.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a)) $300.00
By other than a small entity ... $600.00

* * * * *

11. Section 1.20 is amended by revising paragraphs (b) and (d) through (h) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(b) Processing fee for correcting inventorship in a patent (§ 1.324)—$55.00.

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a)) $55.00
By other than a small entity ... $110.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a)) $425.00
By other than a small entity ... $850.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a)) $975.00
By other than a small entity ... $1,950.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a)) $1,495.00
By other than a small entity ... $2,990.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

By a small entity (§ 1.27(a)) $65.00
By other than a small entity ... $130.00

* * * * *

12. Section 1.53 is amended by revising paragraph (c)(4) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(4) A provisional application is not entitled to the right of priority under 35 U.S.C. 119 or 365(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121 or 365(c) or § 1.78 of any other application. No claim for priority under 35 U.S.C. 119(e) or § 1.78(a)(4) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

* * * * *

13. Section 1.366 is amended by revising paragraph (f) to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See § 1.27(g).

* * * * *

14. Section 1.492 is amended by revising paragraphs (a) through (e) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)) $345.00
By other than a small entity ... $690.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a)) $355.00
By other than a small entity ... $710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)) $500.00
By other than a small entity ... $1,000.00

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.27(a)) $50.00
By other than a small entity ... $100.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.27(a)) $430.00
By other than a small entity ... $860.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)) $40.00
By other than a small entity ... $80.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a)) $9.00
By other than a small entity ... $18.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)) $135.00
By other than a small entity ... $270.00

(e) Surcharge for filing the oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a)) $65.00
By other than a small entity ... $130.00

* * * * *

Dated: December 8, 2000.

Q. Todd Dickinson,

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

[FR Doc. 00–31958 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL164–2; FRL 6917–7]

Approval and Promulgation of Air Quality Plans; Illinois; Post-1996 Rate of Progress Plan for the Chicago Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the post-1996 Rate-of-Progress (ROP) plan submitted by the State of Illinois for the Chicago ozone nonattainment area, as a requested revision of the State Implementation Plan (SIP) for ozone. A post-1996 ROP plan is required for the Chicago ozone nonattainment area under the Clean Air Act (Act). The purpose of the post-1996 ROP plan is to incrementally reduce ground-level ozone (smog) pollution in the Chicago ozone nonattainment area and to provide for progress toward attainment of the 1-hour ozone standard in this nonattainment area. The submitted plan, which covers the period of 1996 through 1999 and emission reductions occurring prior to November 15, 1999, shows that Illinois reduced emissions of ozone-forming pollutants by the amounts required by the Act to occur prior to November 15, 1999. These pollutants include emissions of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X). The submittal includes a demonstration that the Chicago area has also achieved a sufficient emission reduction to meet contingency measure requirements under the Act. In addition to the post-1996 ROP plan and the contingency measure provisions, the EPA is approving, as a revision to the SIP, certain Transportation Control Measures (TCM) included in the plan. EPA is also approving a 1999 on-road mobile source emissions budget of 279.3 tons/day of volatile organic compounds for the Chicago ozone nonattainment area. EPA proposed approval on this SIP revision submittal on March 3, 2000. This final action addresses public comments submitted regarding the proposed rulemaking and the State submittal.

DATES: This final rule is effective January 17, 2001.

ADDRESSES: You can access copies of the SIP revision request and the Technical Support Document (TSD) for the proposed rulemaking on the SIP revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, U.S. Environmental Protection Agency, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

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

The supplemental information is organized in the following order:

I. What Is EPA Approving In This Action?
II. What Is the Procedural Background of the Illinois Submittal and EPA Rulemaking?
III. The Illinois Post-1996 ROP Plan.
A. What is a post-1996 ROP plan?
B. What is the contingency measure requirement?
C. What environmental benefits does the post-1996 ROP plan provide?
D. What Illinois counties are in the Chicago ozone nonattainment area?
E. Who is affected by the Illinois post-1996 ROP plan?
F. What criteria must a post-1996 ROP plan meet to be approved?
G. What are the special requirements for claiming NO_X reductions?
IV. Illinois' Calculation of the Needed ROP Reduction.
A. How does Illinois demonstrate that it meets the requirements for claiming NO_X reductions?
B. How did Illinois calculate the needed ROP and contingency measure reduction?
1. Proportion of VOC to NO_X Emission Reduction.
2. Emission Baselines.
3. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement.
4. 1999 Projected Growth Level.
5. Emission Reduction Needed for ROP Reduction Net-Of-Growth.
6. Calculation of the Needed Contingency Measure Emission Reduction.
V. The Illinois Post-1996 ROP Plan Control Strategies.
A. What are the criteria for acceptable control strategies?
B. What are the control strategies under the Illinois post-1996 ROP plan?
1. Point/Area Sources.
a. Title IV Acid Rain Power Plant Controls.
b. 1999 Cold Cleaning Degreasing.
c. Stepan Batch Processes.
d. Municipal Solid Waste Landfills.
e. Coke Oven By-Product Plants.
2. Mobile Sources.
a. Enhanced Vehicle Inspection/Maintenance Program.
b. Phase I Reformulated Gasoline.
c. Post-1994 Tier 1 Vehicle Emission Rates.
d. 1992 Vehicle Inspection/Maintenance Amendments.
e. Federal Gasoline Detergent Additive.
f. Federal Non-Road Small Engine Standards.
g. Federal Non-Road Heavy-Duty Engine Standards.
h. Clean-Fuel Fleet Vehicle Program.
i. Energy Policy Act.
j. TCMs.
C. What are the **Federal Register** citations for the Federal approval or promulgation of the control measures?
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I. What Is EPA Approving in This Action?

We are approving the following:

A. The post-1996 ROP plan for the Illinois portion of the Chicago ozone nonattainment area (see the definition of the Chicago ozone nonattainment area and the Illinois portion of this area below);

B. The contingency measure plan for this area; and,

C. TCMs implemented between 1996 and 1999 in the area.

We are approving the post-1996 ROP plan because it adequately demonstrates that the State has achieved a permanent and enforceable emission reduction as required for a post-1996 ROP plan by the Act and has made adequate incremental progress toward attaining the 1-hour ozone standard in the Chicago ozone nonattainment area. The post-1996 plan addressed in this rulemaking covers VOC and NO_X emission reductions occurring prior to November 15, 1999.

The State also submitted with the post-1996 ROP plan a demonstration that the Chicago area meets the contingency measure requirements of the Act. We are approving the contingency measure demonstration because it adequately shows a 3 percent reduction in emissions beyond that which is necessary to meet the ROP plan requirements.

We are approving certain TCMs submitted with the post-1996 ROP plan as a revision to the SIP. The plan relies on these TCMs as part of the overall strategy to meet the ROP emission reduction requirement. To be creditable, the TCMs must be incorporated into the SIP.

II. What Is the Procedural Background of the Illinois Submittal and EPA Rulemaking?

On December 18, 1997, the State of Illinois submitted the post-1996 ROP plan for the Chicago ozone nonattainment area as a requested SIP revision. The plan was submitted to meet the Act's requirement, in section 182(c)(2)(B), that the State demonstrate a 9 percent reduction of VOC emissions in the Chicago ozone nonattainment area for the 3 year period between 1996 and 1999. The State submitted proposed amendments to the plan on December 17, 1999, and January 14, 2000, with a request for us to parallel process the plan, as amended, pursuant to the provisions of 40 CFR part 51, appendix V. On January 21, 2000, the Illinois Environmental Protection Agency (Illinois EPA) transmitted further changes to the plan in response to public comments received at the State's January 18, 2000 public hearing. On March 3, 2000, we published a proposed approval, through parallel process, on the Illinois proposed plan as amended January 21, 2000. (See 65 FR 11525). On February 17, 2000, Illinois completed its public review process on the amended plan, which was necessary to receive final approval by us. The State completed its Responsiveness Summary to public comments on February 17, 2000. Illinois also submitted its final, adopted post-1996 ROP plan on February 17, 2000. No changes were made to the plan as proposed on January 14, 2000.

During the 30-day public comment period for our March 3, 2000 proposed rulemaking, we received one public comment letter on the proposal. We address these comments in section VI of this action.

III. The Illinois Post-1996 ROP Plan

A. What Is a Post-1996 ROP Plan?

An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone (smog) in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A post-1996 ROP plan demonstrates how ozone-forming VOC emissions affecting an area will be reduced by 9 percent between 1996 and 1999 (in post-1996 ROP plans, NO_X emission reductions may be substituted for VOC emission reductions, as discussed below).

ROP plans are a requirement of the Act under section 182. Section 182(c)(2)(B) requires States with ozone nonattainment areas classified as serious and above to adopt and implement plans to achieve periodic reductions in VOC emissions after 1996. The requirement is intended to ensure that an area makes progress toward attainment of the ozone NAAQS. The post-1996 ROP emission reductions are to occur at a rate of 3 percent per year relative to the 1990 baseline emissions, net of emission growth, averaged over three-year periods. States must achieve the first three-year 9 percent milestone, called the ''post-1996 ROP plan,'' by November 15, 1999. Because the Chicago ozone nonattainment area is classified as severe, the area is subject to the post-1996 ROP requirement.

In lieu of the 9 percent VOC emission reduction, under section 182(c)(2)(C) of the Act, the post-1996 ROP plan (and subsequent ROP plans) may provide for reductions of both VOC and NO_X emissions as long as the combination of VOC and NO_X emission reductions result in ozone concentration reductions equivalent to or exceeding the ozone concentration reductions resulting from the 9 percent VOC emissions reduction. The substitution of NO_X emission reductions is further discussed below.

The post-1996 ROP plan contains: (1) Documentation showing how the State calculated the emission reduction(s) needed on a daily basis to achieve a 9 percent VOC emission reduction (or its equivalent in combined VOC and NO_X emission reductions); (2) a description of the control measures used to achieve the emission reduction; and (3) a description of how the State has determined the emission reduction from each control measure.

On December 18, 1997, we approved a 15 percent ROP plan for the Chicago Area which showed a 15 percent VOC emission reduction between 1990 and 1996, as required under section 182(b)(1) of the Act (see 62 FR 66279). This 15 percent reduction is a measure of progress toward achieving attainment. The Chicago nonattainment area, however, has not reached attainment of the 1-hour ozone NAAQS through the 15 percent reduction alone. The post-1996 ROP plan will contribute to continued progress toward achieving attainment by the Act's mandated date of November 15, 2007 for the Chicago ozone nonattainment area.

B. What Is the Contingency Measure Requirement?

In addition to the post-1996 ROP plan, the Illinois submittal also addresses contingency measures required under the Act.

Section 172(c)(9) of the Act requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or fails to attain the NAAQS within the time-frame specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revisions for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to: meet ROP emission reduction milestones; achieve attainment of the 1-hour ozone NAAQS by the Act's required deadline; or achieve other applicable milestones of the Act.

Our policy, as provided in the April 16, 1992, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for a 3 percent reduction of 1990 VOC baseline emissions beyond the reduction required for a particular milestone year.

While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure must be implemented within one year

following identification of a milestone failure.

In the December 18, 1997 rulemaking approving the 15 percent ROP Plan for the Chicago Area, we indicated that the 15 percent ROP plan had enough emission reductions to provide a 3 percent reduction beyond the 15 percent reduction required for 1996. The General Preamble indicates that the 3 percent reduction ''buffer'' must be maintained through each ROP milestone. Therefore, Illinois must demonstrate that the Chicago area has enough contingency measure reductions in addition to the reductions claimed for the post-1996 ROP plan to maintain the 3 percent emissions reduction buffer. Because of this requirement, Illinois' post-1996 ROP plan identifies, for contingency purposes, a 3 percent emission reduction beyond the emission reduction required for ROP.

C. What Environmental Benefits Does the Post-1996 ROP Plan Provide?

The proposed Illinois post-1996 ROP plan shows reductions of both VOC and NO_X emissions. VOC and NO_X contribute to the formation of ground-level ozone in the atmosphere.

The reactivity of ozone causes health problems because it damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. When inhaled, even at low levels, ozone can:

- Cause acute respiratory problems such as shortness of breath, chest pain, wheezing, and coughing;
- Aggravate asthma;
- Cause significant temporary decreases in lung capacity;
- Cause inflammation of lung tissue;
- Lead to hospital admissions and emergency room visits; and,
- Impair the body's immune system, making people more susceptible to respiratory illness, including bronchitis and pneumonia.

Repeated exposure to ozone at elevated concentrations for several months may cause permanent structural damage to the lungs.

Because ozone usually forms in hot weather, anyone who spends time outdoors in the summer is at risk, particularly children, moderate exercisers, and outdoor workers. Children are at greatest risk from exposure to ozone because their respiratory systems are still developing and are more susceptible to environmental threats. Children also breathe more air per pound of body weight than adults, thus increasing the potential impacts of their exposure.

People with existing lung disease, including asthma, chronic bronchitis, and emphysema, are at particular risk from high ozone levels. Since they already suffer from reduced ability to breathe, these individuals are often greatly affected by the increased impairment that can result from exposure to ozone.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.,* harsh weather). In long-lived species, these effects may become evident only after several years or even decades, thus having the potential for long-term effects on forest ecosystems. Ground-level ozone damage to the foliage of trees and other plants also can decrease the aesthetic value of ornamental species as well as the natural beauty of our national parks and recreation areas.

The overall ROP emissions reduction includes VOC emissions reductions from sources (industries, vehicles, etc.) within the Chicago ozone nonattainment area, and NO_X emission reductions from sources within the State boundaries, but outside of the Chicago and Metro-East/St. Louis ozone nonattainment areas.

Although the plan's NO_X reductions come from outside the nonattainment area, the reductions are nonetheless creditable toward meeting the overall required ROP reduction. (See ''What are the special requirements for claiming NO_X reductions?,'' below). This is because downstate NO_X emissions contribute to ozone formation in the Chicago ozone nonattainment area, and reducing such emissions helps the Chicago area achieve attainment of the ozone NAAQS.

It should be noted that the Illinois ROP plan documentation refers to the term ''Volatile Organic Material'' (VOM) rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and EPA policy, we are using the term VOC in this rulemaking.

D. What Illinois Counties Are in the Chicago Ozone Nonattainment Area?

The Illinois portion of the Chicago ozone nonattainment area includes the counties of Cook, DuPage, Kane, Lake, McHenry, and Will, and the townships of Aux Sable and Goose Lake in Grundy County, and Oswego in Kendall County.

E. Who Is Affected by the Illinois Post-1996 ROP Plan?

The post-1996 ROP plan does not create any new control requirements. Rather, it is a demonstration that existing regulations and control programs achieved a 9 percent emission reduction.

The post-1996 ROP plan refers to various emission control regulations that have contributed to achieving the required emission reduction for the Chicago area. These regulations, both Federal and State, affect a variety of industries, businesses, and, through the vehicle inspection and maintenance program, motor vehicle owners. These regulations are already federally enforceable through separate SIP revisions or through separate EPA promulgation.

The TCMs submitted with the post-1996 ROP plan are the only State ROP measures that are not already part of the federally approved SIP. We are approving these TCMs in this rulemaking action, and we discuss the TCM approval in section VII of this rulemaking.

F. What Criteria Must a Post-1996 ROP Plan Meet To Be Approved?

Section 182(c)(2)(B) establishes certain elements a post-1996 ROP plan must contain for approval. These elements are: (1) An emission baseline; (2) an emission target level; (3) an emission reduction estimate to compensate for emission growth projections and to reach the ROP emission reduction goal; and (4) emission reduction estimates for the plan's control measures. Through these elements, the plan must show that the nonattainment area will achieve a 9 percent VOC emission reduction by November 15, 1999 (or its equivalent in combined VOC and NO_X emission reductions).

We have issued several guidance documents for States to use in developing approvable post-1996 ROP plans. These documents address such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline emissions and emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various control measures, including federal measures.

Our January 1994, policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration* (post-1996 policy), provides States with an appropriate method to calculate the emission

reductions needed to meet the ROP emission reduction requirement. A complete list of ROP guidance documents is provided in the Technical Support Document (TSD) for the March 3, 2000 proposed rulemaking (65 FR 11525) on the State's post-1996 ROP plan. The TSD for the proposed rulemaking can be obtained from the Region 5 office at the address indicated above.

G. What Are the Special Requirements for Claiming NO_X Reductions?

If a post-1996 ROP plan relies on NO_X reductions, it is subject to certain additional requirements. As noted above, under section 182(c)(2)(C) of the Act, a plan can substitute NO_X reductions for VOC if the resulting reduction in ozone concentrations is at least equivalent to the ozone reduction that would occur under a plan that relies only on VOC reductions. As required by section 182(c)(2)(C), we issued policy concerning the conditions for demonstrating equivalency (see ''NO_X Substitution Guidance,'' December 1993). Our NO_X substitution policy provides that a ROP plan based in part on a NO_X substitution strategy must show that the sum of the creditable VOC and NO_X reduction percentages (relative to 1990 baseline emissions) equal or exceed a total of 9. Moreover, the State must provide technical justification that the NO_X reductions will reduce ozone concentrations within the nonattainment area.

On December 29, 1997, we issued a policy memorandum entitled, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS'' (December 1997 policy). This policy document provides that a State included in the core part of the Ozone Transport Assessment Group (OTAG) domain (within the fine grid area where NO_X emission reductions will be required) can claim ROP credit for NO_X reductions that occur within the State's boundaries. (For more information on OTAG, see *http://www.epa.gov/ttn/rto/otag*). Illinois is within the core of the OTAG domain. Consequently, the State can claim NO_X reductions from outside of the Chicago ozone nonattainment area, but within the State's boundaries, for its post-1996 ROP plan, provided the State submits a technical analysis showing that NO_X reductions outside of the nonattainment area will reduce ozone concentrations in the nonattainment area.

The December 1997 policy also states that a nonattainment area which has been granted a NO_X waiver can still claim NO_X reductions from outside the nonattainment area, but within the State's boundaries, if such reductions will reduce ozone concentrations within the nonattainment area. We granted a NO_X waiver for the Chicago ozone nonattainment area on January 26, 1996 (61 FR 2428) and proposed a NO_X waiver for the Illinois portion of the St. Louis ozone nonattainment area on April 17, 2000 (65 FR 20404). NO_X waivers are authorized under section 182(f) of the Act. A State can obtain a waiver to exempt an area from local NO_X control requirements if it can show that local NO_X reductions are not beneficial for attainment of the ozone NAAQS. Illinois made this demonstration for the Chicago ozone nonattainment area, and a NO_X waiver was granted. Illinois has made a similar demonstration for the Illinois portion of the St. Louis nonattainment area. OTAG modeling, however, has shown that several NO_X waiver areas actually benefit from NO_X reductions upwind and outside of the specific local areas. Therefore, under the December 1997 policy, a State can credit NO_X reductions outside a NO_X waiver area, but within the State's boundaries, if the State provides a technical analysis showing that the NO_X reductions will lower ozone concentrations within the nonattainment area.

IV. Illinois' Calculation of the Needed ROP Reduction

A. How Does Illinois Demonstrate That it Meets the Requirements for Claiming NO_X Reductions?

To justify claiming upwind NO_X reductions for ROP, Illinois submitted results of both the OTAG regional ozone modeling study, and ozone modeling done in January 1999 by the Lake Michigan Air Directors Consortium (LADCO). The modeling results show that downstate NO_X reductions contribute to a reduction of ozone background concentrations in the Chicago Area. These reduced background concentrations lead to reduced ozone concentrations within and downwind of the Chicago area. Illinois, therefore, satisfies the requirement set forth in the December 1997 policy that NO_X reductions outside of the nonattainment area must reduce ozone concentrations within the nonattainment area to be creditable as ROP reductions.

B. How Did Illinois Calculate the Needed ROP and Contingency Measure Reduction?

The following tables summarize the State's post-1996 ROP calculations for determining the needed 9 percent ROP and 3 percent contingency measure emission reductions. The calculation of required emission reductions was based on a combination of VOC and NO_X emission reductions. To achieve the 9 percent emission reduction, the State chose a VOC/NO_X emission reduction blend of a 2 percent VOC emission reduction and a 7 percent NO_X emission reduction.

NEEDED VOC REDUCTION BY 1999

	Tons VOC/Day
Calculation of the VOC Target Level for 1999	
1990 Chicago Area Total VOC Emissions	1,363.40
1990 ROP VOC Emissions (Anthropogenic only)	1,216.56
1990–99 Noncreditable Reductions	179.57
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1,036.99
2 percent of Adjusted Base Year Emissions	20.74
1999 Fleet Turnover Correction Factor	28.46
1996 Target Level (From 15 percent ROP Plan)	857.02
1999 Target Level (1996 Target Level minus 2 percent Reductions minus Fleet Turnover Correction Factor)	807.82
Calculation of the Needed VOC Reduction Net-of-Growth	
1996 VOC Emissions with 15 percent ROP Plan Measures	835.81
1999 Projected VOC Emissions (1996 VOC Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	929.61

NEEDED VOC REDUCTION BY 1999—Continued

	Tons VOC/ Day
VOC Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	121.79
Contingency Measure Requirement (3 percent of Adjusted Base Year Emissions)	31.11
Total VOC Emission Reductions Required	152.90

NEEDED NO_X REDUCTION BY 1999

	Tons NO_X/ Day
Calculation of the NO_X Target Level For 1999	
1990 Attainment Area Total NO_X Emissions	2085.80
1990 ROP NO_X Emissions (Anthropogenic only)	2085.80
1990–99 Noncreditable Reductions	128.26
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1957.54
7 percent of Adjusted Base Year Emissions	137.03
1999 Target Level: (1990 Adjusted Base Year Emissions minus 7 percent Reductions)	1820.51
Calculation of the Needed NO_X Reduction Net-of-Growth	
1999 Projected NO_X Emissions (1996 NO_X Emissions Grown to 1999 plus Noncreditable Emission Reductions Only)	2063.03
Creditable Reduction Needs by 1999 Net-of-Growth (1999 Projected Emissions minus 1999 Target Level)	242.52
Contingency Measure Requirement (All Contingency Coming From VOC Portion of ROP Plan)	0
Total NO_X Emission Reduction Required	242.52

Using our post-1996 policy, Illinois calculated the needed emissions reduction by taking the following steps:

(1) Determine what proportion of the 9 percent reduction is VOC and what proportion is NO_X;

(2) Establish the emission baselines for both VOC and NO_X;

(3) Calculate the emission target levels to meet the overall 9 percent reduction by 1999;

(4) Estimate the projected emission growth that would occur if no 9 percent emission reduction takes place;

(5) Subtract the projected emission level from the emission target to determine the VOC and NO_X emission reduction needed, net of growth; and,

(6) Calculate the needed contingency measure reduction.

The State obtained data for developing the plan from the Chicago ozone nonattainment area 15 percent ROP Plan, EPA guidance documents, and information received from industry and public agencies.

1. Proportion of VOC to NO_X Emission Reduction

Illinois' post-1996 ROP plan relies on both VOC and NO_X reductions to meet the 9 percent reduction in ozone precursors. Under Illinois' plan, the VOC reduction is a 2 percent reduction of the VOC emissions in the Illinois portion of the Chicago nonattainment area, and the NO_X reduction is a 7 percent reduction of the NO_X emissions within the State, but outside of the NO_X waiver areas (outside of the ozone nonattainment areas).

2. Emission Baselines

Under our post-1996 policy, ROP plans that rely on both VOC and NO_X reductions should have separate emission baselines for VOC and NO_X. The Act requires baselines to represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average VOC and NO_X daily emissions that occur on weekdays during the peak 3-month ozone period of June through August.

Illinois used the Chicago area's 1990 base year emission inventory as the basis for the VOC baseline. We approved the Chicago area 1990 inventory as a SIP revision on March 14, 1995 (see 60 FR 13631).

For the NO_X baseline, Illinois used the 1990 statewide NO_X emission inventory it submitted to EPA in response to the NO_X SIP Call (see **Federal Register** 63 FR 57356, October 27, 1998). The NO_X baseline consists of the 1990 emissions which occurred statewide, but excluding emissions from the Chicago and Metro-East/St. Louis ozone nonattainment areas. The State excluded the nonattainment area emissions from the baseline because the State is relying on NO_X reductions only from the State's ozone attainment area, and because the State has an approved waiver from NO_X emission controls in the Chicago ozone nonattainment area and has sought a waiver from certain NO_X controls in the Metro-East/St. Louis ozone nonattainment area. The EPA proposed to approve the Metro-East/St. Louis NO_X waiver on April 17, 2000 (see **Federal Register** 65 FR 20404, April 17, 2000). Illinois EPA's technical analysis for supporting NO_X substitution shows that NO_X reductions which occur in the attainment area reduces ozone concentrations in the Chicago ozone nonattainment area. Therefore, Illinois' NO_X baseline is consistent with the State's technical analysis submitted to justify NO_X substitution in the Chicago nonattainment area post-1996 ROP plan.

The Act requires that the ROP baseline be ''adjusted'' to exclude emissions eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990. Because these regulations were promulgated before the 1990 amendments to the Act, the Act prohibits States from claiming ROP reductions from these regulations. To achieve an accurate ROP target, however, the State must subtract the noncreditable reductions from the baseline to reflect the impact of these reductions on 1999 emissions. The resulting inventory is called the ''adjusted base year inventory.''

The adjusted base year inventory under the Illinois post-1996 ROP plan is different than the adjusted inventory used under the 15 percent ROP Plan.

This is because the emission reduction associated with the FMVCP program changes over time as fleet turnover occurs, *i.e.,* old vehicles in an area are replaced with new vehicles. Illinois EPA determined the emission reduction associated with the noncreditable FMVCP and RVP programs by using our MOBILE emission factors program.

3. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement

After the State establishes the adjusted base year emission inventories, the next step is to calculate the VOC and NO_X emission target levels for 1999. Our post-1996 policy provides the method for calculating target levels. To calculate the VOC target, the State first identified the previous milestone target, which in this case is the 1996 target level under the 15 percent plan. From the 1996 target level, the State subtracted (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction factor.

The State obtained the 1996 VOC target level from the 15 percent ROP Plan. The percent reduction used is 2 percent of the adjusted base year inventory. The fleet turnover correction factor represents the emission reduction that has occurred under the pre-1990 Act FMVCP and RVP regulations between consecutive milestone years, *i.e.,* 1996 to 1999. Since the 1996 target level and the 2 percent ROP reduction do not factor in these reductions, the fleet turnover correction factor is necessary to accurately calculate the emission level that must be achieved by 1999.

For NO_X, a 1996 target level from a 15 percent plan does not exist. Therefore, the State needs only to subtract the 7 percent adjusted emission inventory reductions, and the noncreditable NO_X reductions from the pre-1990 Act FMVCP program, from the 1990 adjusted base year emission inventory. No fleet correction factor is necessary when calculating the NO_X target this way.

4. 1999 Projected Growth Level

To account for source emission growth between 1990 and 1999, the State must develop projected emission inventories for VOC and NO_X. The projected emission inventories represent what emissions would be expected in 1999 if no post-1996 ROP control measures had been implemented.

The State established the projected emission inventories for point, area, and nonroad source categories by taking the 1990 emission inventories and applying either EPA growth factors, or State justified growth factors. Projected vehicle emissions were established using the MOBILE model. The projected emission inventory for NO_X is consistent with the emission inventory data which the State submitted to us in response to the NO_X SIP call.

5. Emission Reduction Needed for ROP Reduction Net-Of-Growth

According to the State's calculations, a 152.90 TPD VOC emission reduction is needed in the Chicago ozone nonattainment area, and a 242.52 TPD NO_X emission reduction is needed in the Illinois ozone attainment areas to meet the 9 percent ROP requirement.

6. Calculation of the Needed Contingency Measure Emission Reduction

Consistent with guidance provided in the General Preamble, Illinois determined the emission reduction needed to meet the contingency measure requirement by multiplying 3 percent of the 1990 adjusted base year VOC emissions. Based on this calculation, the needed contingency measure reduction for the Chicago nonattainment area is 31.11 TPD of VOC.

V. The Illinois Post-1996 ROP Plan Control Strategies

A. What Are the Criteria for Acceptable Control Strategies?

Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, *i.e.,* by November 15, 1999.

To meet this requirement, our policy provides that all credited emission reductions must be real, permanent, and enforceable. In addition, the plan's control measures must be adopted and implemented before November 15, 1999.

Post-1996 plans must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy under the General Preamble provides that, at a minimum, the methods should meet the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and, (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act places limits on what control measures States can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) ''Fix-Up'' regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program ''Fix-Ups'' as required under section 182(a)(2)(B) of the Act.

B. What Are the Control Strategies Under the Illinois Post-1996 ROP Plan?

1. Point/Area Sources

a. *Title IV Acid Rain Power Plant Controls.* Under title IV of the Clean Air Act, certain power plants are required to limit NO_X emissions to reduce acid rain. These NO_X reductions, in turn, benefit the Chicago area in dealing with its ozone nonattainment problem.

Phase I of the acid rain regulation began on January 1, 1996, and Phase II began January 2000. Illinois is claiming credit for NO_X control measures that certain power plants have implemented to meet the Federal acid rain rules.

The power plants that Illinois is claiming NO_X reductions from are the following:

Plant name	Unit(s)	Control technology	Emission Reduction NO_X TPD
Illinois Power	Baldwin 1	Selective Catalytic Reduction	50.00
Illinois Power	Baldwin 2	Selective Catalytic Reduction	44.85
Illinois Power	Baldwin 3	Low NO_X Burner	16.10
Illinois Power	Vermillion 1 –2	Low NO_X Burner	5.48
Illinois Power	Hennepin 1–2	Boiler Tuning Modifications	3.78
Electric Energy	Joppa 1–6	Low NO_X Burner	51.85
Commonwealth Edison	Powerton 5–6	Change to Low-Sulfur Coal	14.30
Dominion Energy	Kincaid 1–2	Change to Low-Sulfur Coal	18.39

Plant name	Unit(s)	Control technology	Emission Reduction NO_X TPD
Cilco	Edwards 2–3	Low NO_X Burner	17.18

Baldwin 3, Vermillion 1–2, Hennepin 2, and Joppa 1–6 are subject to Phase I NO_X emission rates under the Federal acid rain rules. Powerton 5–6 and Kincaid 1–2 were required to change to low-sulfur coal to meet sulfur dioxide limitations under the Federal acid rain rules; low-sulfur coal has reduced NO_X emission rates at these plants.

Baldwin 1–2, and Edwards 2–3 are subject to the acid rain Phase II NO_X emission limitations, which took effect January 2000. NO_X reductions from these sources are creditable because the power plants actually implemented control measures to meet the Phase II requirements prior to November 15, 1999.

The State determined emission reductions using OTAG data, as well as data from Continuous Emission Monitors (CEM) at the plants.

b. *1999 Cold Cleaning Degreasing.* This rule establishes vapor pressure standards for cold cleaning degreasing solvents sold or used in the Chicago ozone nonattainment area. Cold cleaning degreasing takes place at auto repair shops, car dealerships, machine shops and other metal fabrication, and manufacturing businesses. Cold cleaning degreasers typically consist of a holding tank containing solvent, connecting hoses, and a small vat where components are sprayed and brushed clean. The rule regulates both the suppliers and users of cold cleaning degreasing solvents in the nonattainment area. Beginning March 15, 1999, the rule limits the vapor pressure of solvent to 2.0 millimeters of mercury (0.038 pounds per square inch) measured at 20 degrees Celsius (68 degrees Fahrenheit).

c. *Stepan Batch Processes.* On April 2, 1996, we approved Illinois' batch process RACT rule as a revision to the SIP. Under the rule, the process vents at batch operations must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Illinois had claimed credit for the rule under the 15 percent plan. At the time of rulemaking on the 15 percent plan, however, we did not allow credit for controls at Stepan Company's Milldale facility because of uncertainty whether the controls at the facility were implemented before or after 1990. As part of the December 17, 1999 post-1996 ROP amended submittal, Illinois submitted documentation showing that the controls were implemented after 1990. Therefore, in this rulemaking, we are approving credit for the emission reductions which occurred at Stepan Company. These emission reductions were ultimately not needed for approval of Illinois' 15 percent ROP plan, and, therefore, are creditable toward the post-1996 ROP plan requirements.

d. *Municipal Solid Waste Landfills.* On November 23, 1998 (63 FR 64628), we approved Illinois' section 111(d)/129 State Plan for municipal solid waste landfills. The State plan includes regulations requiring the control of Non-Methane Organic Compound (NMOC) emissions at existing landfills that have a design capacity threshold equal to or greater than 2.5 million megagrams (Mg) measured in mass units and 2.5 million cubic meters measured in volume units, and that have an annual emissions equal to or greater than 50 Mg/year of NMOC gases. The rule adopts our March 12, 1996, Emission Guidelines for this source category (see 61 FR 9905). Subject landfills must install a well-designed and well-operated collection and control system to reduce NMOC gases. A portion of NMOC is VOC, and therefore landfill controls are creditable toward the ROP plan. In the Chicago ozone nonattainment area, there are twelve landfills which have installed and are operating the required gas collection and control systems pursuant to construction permits.

e. *Coke Oven By-Product Plants.* This Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) applies to all furnace and foundry coke oven by-product recovery plants. The NESHAP requires that process vessels and tar storage tanks in furnace and foundry coke by-product recovery plants be enclosed and that emissions be ducted to an enclosed point in the by-product recovery process where they are to be recovered or destroyed. This requirement is based on the use of a gas blanketing system. The same requirement also applies to storage tanks for benzene, benzene-toluene-xylene mixtures, and light-oil in furnace coke by-product recovery plants. The standard also calls for visual inspections and monitoring (leak detection and repair) as well as annual maintenance inspections.

It should be noted that Illinois originally claimed credit in the December 18, 1997, post-1996 ROP plan submittal for the Emission Reduction Marketing System (ERMS), a new State regulation establishing a VOC cap and trade requirement for Chicago area stationary sources. The ERMS program, however, has been delayed beyond November 15, 1999. Therefore, Illinois is not claiming credit in the final post-1996 ROP plan for ERMS. Nonetheless, Illinois EPA plans to rely on the ERMS program in future ROP plans.

2. Mobile Sources

a. *Enhanced Vehicle Inspection/Maintenance Program.* The Act requires Illinois to establish an enhanced vehicle I/M program in the Chicago area to achieve a higher emission reduction than the State's original I/M program. Enhanced I/M covers more vehicles in operation in the fleet and employs more effective techniques for finding high emitting vehicles. The new program also has additional features to ensure that all vehicles are tested properly and are effectively repaired.

We approved the Illinois' enhanced I/M program for the Chicago ozone nonattainment area on February 22, 1999 (64 FR 8517). The State began testing vehicles under the new program on February 1, 1999.

A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The I/M contractor has constructed or retrofitted all the emission test sites required under the State I/M contract.

The Illinois I/M program requires coverage of all 1968 and newer gasoline-powered light-duty passenger cars and light-duty trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR). The program requires all applicable 1981 and newer vehicles to meet an IM240 exhaust test (a test that simulates actual driving conditions using a dynamometer). These vehicles must also undergo a gas cap check to reduce evaporative emissions. All applicable 1968 through 1980 vehicles will be subject to a basic idle emission exhaust test. The frequency of the test is biennial, with the first four years of a new vehicle excluded.

Due to the delay in implementation of the enhanced I/M program, we requested Illinois EPA to revise its original VOC emission reduction estimate from 30.10 TPD to 15 TPD, which represents only the level of

emission reduction that occurred between February 1, 1999, and November 15, 1999. Since the 15 TPD reduction does not reflect the program's full cutpoints, and thus, emission reduction potential, additional emission reduction credit will be available for use in future ROP plans.

b. *Phase I Reformulated Gasoline.* Beginning January 1, 1995, EPA regulations require only reformulated gasoline to be sold in the Chicago ozone nonattainment area. Reformulated gasoline is specially designed to result in less VOC emissions occurring from motor vehicle operation and gasoline evaporation. Illinois ran our MOBILE model and determined that Phase I of the reformulated gasoline requirement achieved 65.5 TPD of VOC emission reductions in the Chicago ozone nonattainment area in 1999.

c. *Post-1994 Tier 1 Vehicle Emission Rates.* Pursuant to section 202 of the Act, we promulgated new standards that tighten emission control requirements for passenger cars and light-duty trucks, called ''Tier 1'' standards. The standards, fully effective in 1996, are approximately twice as stringent as pre-1990 vehicle standards.

Tier 1 standards require both VOC and NO_X emission reductions. Illinois is claiming VOC reductions from Tier 1 that occur within the Chicago ozone nonattainment area, and NO_X reductions that occur within the Illinois ozone attainment areas.

d. *1992 Vehicle Inspection/Maintenance Amendments.* In 1992, Illinois added improvements to its original I/M program as a result of an agreement resolving a lawsuit between Wisconsin and EPA. Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The State also increased the coverage of the program over the Chicago metropolitan area. Illinois fully implemented these changes to the I/M program in 1992.

e. *Federal Gasoline Detergent Additive.* Beginning January 1, 1995, Federal regulations require that gasoline sold nationwide must contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiency of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

f. *Federal Non-Road Small Engine Standards.* Illinois is claiming emission reduction credit from two Federal rules which affect gasoline nonroad engines, the 1995 Federal emission standards for nonroad engines at 25 horsepower (hp) and below, and the 1996 marine gasoline engine standards.

The nonroad engine standards, beginning in model year 1997, primarily affects two stroke and four stroke lawn and garden equipment, and light commercial, construction, and logging equipment. The marine engine rule applies to marine spark-ignition engines for outboards, personal watercraft, and jet boats, beginning in model year 1998. Illinois EPA estimated the emission reduction for these standards through the use of our guidance document, ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' dated November 28, 1994.

The State also claims an emission reduction for the impact the reformulated gasoline program has on nonroad engines. Our guidance document, ''VOC Emission Benefits for Nonroad Equipment with the Use of Federal Phase I Reformulated Gasoline,'' dated August 18, 1993, provides the methodology for determining the emission reduction impact of reformulated gasoline on nonroad engines and was used by Illinois to determine the emission reduction credit for this control measure.

g. *Federal Non-Road Heavy-Duty Engine Standards.* In 1994, we promulgated national NO_X emission standards for large nonroad Compression Ignition (CI) engines at 50 hp and above. Such engines include farm tractors, bulldozers, and forklifts. This standard is the ''Tier 1'' standard for CI engines at or above 50 hp. Implementation of the standard began January 1, 1996. Illinois is claiming credit for the NO_X reductions this regulation achieves in the Illinois ozone attainment area.

h. *Clean-Fuel Fleet Vehicle Program.* The State has a Clean-Fuel Fleet (CFF) rule which requires certain vehicle fleets in the Chicago ozone nonattainment area to purchase vehicles with tighter emission standards than conventional vehicles. The program affects fleets with ten or more vehicles which can be centrally fueled. Beginning with model year 1999, covered fleets must ensure that a certain percentage of new vehicle acquisitions are certified to meet EPA's Low Emission Vehicle (LEV) emission standards. In model year 1999, 30 percent of new light-duty vehicles and 50 percent of heavy-duty vehicles acquired by covered fleets must be certified LEVs.

i. *Energy Policy Act.* The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in Federal, State, and utility company fleets. EPAct requires that 25 percent of new vehicle purchases by Federal fleets, 10 percent of new vehicle purchases by State fleets, and 30 percent of new vehicle purchases by utility fleets must be AFVs beginning in 1996. Illinois EPA estimated that, by 1996, 2,000 AFVs were operating in the Chicago ozone nonattainment area.

j. *TCMs.* See Part VII of this **Federal Register** document, ''EPA's approval of the TCMs in the post-1996 ROP plan,'' for a description of the TCMs for which Illinois is claiming credit to meet the 9 percent reduction requirement.

*C. What are the **Federal Register** citations for the Federal approval or promulgation of the control measures?*

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

Control measure	Date of EPA approval or promulgation
Title IV Acid Rain Power Plant Controls	Federal Regulation, 40 CFR 72–78, April 13, 1995 (60 FR 18761).
1999 Cold Cleaning Degreasing	November 26, 1997 (62 FR 6295).
Batch Process Rule	April 2, 1996 (61 FR 14484).
Municipal Solid Waste Landfills	November 23, 1998 (63 FR 64628).
Coke Oven By-Products Recovery NESHAP	Federal Regulation, 40 CFR 61 Subpart L, September 14, 1989 (54 FR 38047).
Enhanced Vehicle I/M Program	February 22, 1999 (64 FR 8517).
Reformulated Gasoline	Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).
Post-1994 Tier 1 Vehicle Emission Rates	Federal Regulation, 40 CFR 86, June 5, 1991 (56 FR 25724).
1992 Vehicle I/M Program Amendments	April 9, 1996 (61 FR 15715).
Federal Gasoline Detergent Additive	Federal Regulation, 40 CFR 80, Subpart G, November 1, 1994 (59 FR 54706).

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES—Continued

Control measure	Date of EPA approval or promulgation
TCMs	EPA is promulgating approval in this rulemaking action.
1992 EPAct	Federal Regulation, 10 CFR 490, March 14, 1996 (61 FR 10621).
Federal Nonroad Small Gasoline Engine Standards	Federal Regulation, 40 CFR 90, July 3, 1995 (60 FR 34582).
Federal Marine Spark—Ignition Engine Standard	Federal Regulation, 40 CFR 91, October 4, 1996 (61 FR 52087).
Federal Nonroad Large Diesel Engine Standards	Federal Regulation, 40 CFR 89, June 17, 1994 (59 FR 31306).
CFF Vehicle Program	March 19, 1996 (61 FR 11139).

D. How Did Illinois Calculate the Emission Reductions for the Control Strategies?

We have issued several policy documents, listed in the TSD for the April 17, 2000 proposed rulemaking, which provide assumptions for States to use in quantifying emission reductions. We have also developed the MOBILE model for the States to calculate emission reductions from mobile sources.

The State appropriately used our policy documents and MOBILE model for calculating emission reductions. Illinois obtained the necessary data for quantifying the source baselines and emission reductions from its 1990 emission inventory, OTAG inventory submittal, CEM data (for acid rain reductions), permit information, and from surveying affected industries. Where Illinois had to develop its own assumptions regarding emission reductions, the assumptions were adequately justified based on existing data.

It should be noted that Illinois is claiming post-1996 ROP credit for mobile and nonroad source measures that were part of the 15 percent ROP Plan, including Tier 1, I/M expansion, Phase I reformulated gasoline, nonroad small engine standards, Federal detergent additive, and EPAct. No double-counting of emission reductions, however, has occurred. Unlike other 15 percent control measures, the State did not consider these measures when calculating the 1999 projected growth inventory. The State treated these reductions separately because the impacts of these measures change over time due to fleet turnover.

As noted in section IV of this final rulemaking, the State calculated the projected growth in emissions assuming no post-1996 ROP emission reductions in place, and subtracted the 1999 target from the projected emissions to find the needed reduction net-of-growth. The impact on the plan would be the same if Illinois factored in the above control measures in the 1999 projected growth inventory and had not treated these measures as creditable post-1996 ROP reductions. Therefore, Illinois can claim reductions from these measures as legitimate post-1996 ROP reductions.

E. What Amount of Emission Reduction Is Achieved by Each Control Strategy?

The following tables summarize the State's VOC and NO_X reduction claims for the post-1996 ROP control measures, and the amount of reductions we find acceptable.

Control measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	16.80	16.80
Phase I Reformulated Gasoline	65.50	65.50
Federal Detergent Additive Gasoline	2.20	2.20
1992 I/M Program Improvements	7.00	7.00
Enhanced I/M Program	30.10	15.00
Conventional TCMs	2.00	2.00
National Energy Policy Act of 1992	0.20	0.20
Federal Non-Road Small Engine Standards	23.43	23.43
National Low Emission Vehicle Program	Deferred	Deferred
Clean Fuel Fleet Vehicle Program	0.30	0.30
Subtotal	147.53	132.43
Industrial Source Measures		
ERMS	Deferred	Deferred
Stepan Batch Process Rule Credit	9.40	9.40
Municipal Solid Waste Landfill	1.06	1.06
Coke Oven By-Product NESHAP	2.65	2.65
Subtotal	13.11	13.11
Area Source Measures		
1999 Cold Cleaning Degreasing Limits	11.35	11.35
Total 1999 creditable VOC reductions	171.99	156.89

Control measure	NO_X reduction state claimed tons/day	NO_X reduction credit accepted tons/day
Mobile Source Measures		
Post-1994 Tier 1 Vehicle Emission Rates	24.30	24.30
Federal Heavy-Duty Non-Road Engine Standards	15.75	15.75
Subtotal	40.05	40.05
Industrial Source Measures		
Title IV Acid Rain Controls	221.92	221.92
Total 1999 Creditable NO_X reductions	261.97	261.97

VI. Public Comment on Proposed Rulemaking and EPA's Response

EPA received one public comment letter regarding our proposed rulemaking of the Illinois post-1996 ROP plan. The comment letter was submitted by the American Lung Association of Metropolitan Chicago.

The commenter disagrees with our proposed rulemaking because we accept downstate NO_X emission reductions as one of the control strategies for the Chicago area post-1996 ROP demonstration. The following discussion summarizes the commenter's arguments against crediting downstate NO_X reductions, and provides our responses.

Comment: The commenter believes that the Act prohibits NO_X reductions from outside the Chicago ozone nonattainment area from being claimed as creditable ROP reductions under the post-1996 ROP plan. Section 182(c)(2)(B) of the Act states that the post-1996 ROP plan shall reduce by 9 percent ''baseline emissions,'' as described in section 182(b)(1)(B). Section 182(b)(1)(B), in turn, defines ''baseline emissions'' to mean the total amount of actual VOC or NO_X emission from all anthropogenic sources in the area during 1990, excluding emissions reduced by pre-1990 vehicle emissions regulations and 1990 gasoline volatility regulations. Based on section 182(b)(1)(B), the commenter asserts that, since baseline emissions under the Act's definition reflect only VOC or NO_X emissions within the ozone nonattainment area, and a 9 percent ROP plan is to reduce the emission baseline, Illinois is prohibited from claiming NO_X reductions from outside of the nonattainment area.

Response: We disagree with the commenter. Claiming downstate NO_X reductions is consistent with the Act's requirements concerning ROP plans and NO_X substitution.

The Act's provision for NO_X substitution is separate from the sections of the Act focused on by the commenter. Section 182(c)(2)(B) of the Act discusses the reduction of VOC emissions by a post-1996 ROP plan. Section 182(c)(2)(C) provides that NO_X reductions can be substituted for or combined with VOC reductions to meet the ROP requirements under section 182(c)(2)(B). Section 182(c)(2)(C) does not state such NO_X reductions must come from ''baseline emissions'' as defined under section 182(b)(1)(B). Rather, section 182(c)(2)(C) defers to the EPA Administrator to determine ''the conditions under which NO_X control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution.'' The only caveat to NO_X substitution under 182(c)(2)(C) is that NO_X reductions claimed under the ROP plan, in combination with VOC reductions, ''would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reduction required under section 182(c)(2)(B).'' Accordingly, the Act directs us to use our technical judgement to determine what types of NO_X control would be suitable for NO_X substitution strategies under section 182(c)(2)(C).

As discussed in section III of this final rulemaking, we have made the technical determination that, for areas within the OTAG fine grid, upwind NO_X reductions can result in reductions in ozone concentrations that are equivalent to results achievable from local VOC reductions. In Part IV of this **Federal Register** document, we discussed how we provided Illinois with guidance on how to establish VOC/NO_X reduction equivalency with respect to upwind NO_X reductions, and how the State appropriately followed that guidance. The ozone modeling contained in the State's April 1998 attainment demonstration shows upwind NO_X emissions significantly contribute to high ozone concentrations in the Chicago area. Even if the Chicago area reduces VOC emissions significantly beyond current levels, the area would not reach attainment without reduction of upwind NO_X emissions. These findings are consistent with the results of OTAG's study of NO_X transport on ozone nonattainment areas. Moreover, the State submitted, as part of the post-1996 ROP Plan, modeling results from the Lake Michigan Air Directors Consortium (LADCO) and from OTAG to demonstrate that upwind NO_X reductions do reduce ozone concentrations in the Chicago area. All of this is consistent with guidance in the December 29, 1997 policy, which explains the conditions under which a NO_X waiver area may claim ROP credit for upwind NO_X reductions. (See our answer to ''How does Illinois demonstrate that it meets the requirements for claiming NO_X reductions?'' in Part IV of this **Federal Register** document.) Therefore, ROP credit for upwind NO_X reductions is consistent with section 182(c)(2)(C), which directs that the substitution of NO_X for VOC control, or the combination of NO_X and VOC control, ''maximize the reduction in ozone air pollution.''

Comment: The commenter alleges that the State's Post-1996 ROP Plan has not met the requirement under section 182(c)(2)(C) that the specific NO_X reductions credited toward ROP provide reductions in ozone concentrations at least equivalent to that which would result from a 9% reduction in VOC emissions.

Response: We disagree with the commenter and believe the State's plan is consistent with the requirements of section 182(c)(2)(C) and EPA guidance interpreting that section, and does indeed ensure VOC/NO_X equivalency.

We issued NO_X substitution guidance initially on December 15, 1993 and clarified the guidance on August 8, 1994.[1] In each case, the guidance

[1] ''Transmittal of NO_X Substitution Guidance,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Air Division Directors, December 15, 1993. ''Clarification of Policy for Nitrogen Oxides (NO_X) Substitution,'' memorandum from John S. Seitz, Director, Office of

requires a demonstration that substitution of NO_X for VOC controls will provide at least equivalent ozone benefits. The 1993 guidance stated that States should ''justify substitution by illustrating 'consistency' between the cumulative emission changes emerging from the reasonable further progress/substitution and the emission reductions in the model attainment demonstration (or comparable modeling analysis).'' In the 1994 guidance, EPA required either photochemical grid modeling or regional modeling results to show that NO_X control is beneficial in helping an area to attain the ozone NAAQS.

As described in the 1993 guidance, any combination of VOC and NO_X emission reduction percentages which total to 3 percent per year, *e.g.*, 2 percent NO_X and 1 percent VOC, and which meet other SIP consistency requirements described in that document are allowed (VOC and NO_X emission reductions are equated on a percentage equivalency basis). These requirements ensure that the cumulative ROP reductions are consistent with the emission reduction measures identified in the model attainment demonstration. Further, the NO_X emission reductions credited toward ROP may be capped by the cumulative reductions dictated by the attainment demonstration. For example, a control strategy emerging from a modeled attainment demonstration might show reductions of 6% NO_X and 40% VOC are needed to attain. Assuming zero creditable NO_X emission reductions from 1990 through 1996, NO_X reductions averaging 2% per year over the 3 years from 1996 to 1999 represent a cap on the NO_X ROP reductions. In allowing a combination of NO_X and VOC controls or the substitution of NO_X emissions reductions for VOC emissions reductions, section 182(c)(2)(C) of the statute states that the resulting reductions ''in ozone concentrations'' must be ''at least equivalent'' to that which would result from the 3% VOC reductions required as a demonstration of ROP under section 182(c)(2)(B). The second sentence of Section 182(c)(2)(C) requires us to issue guidance ''concerning the conditions under which NO_X control may be substituted for [or combined with] VOC control.'' In particular, we are authorized to address in the guidance the appropriate amounts of VOC control and NO_X control needed, in combination, ''in order to maximize the reduction in ozone air pollution.'' Further, the Act explicitly provides that the guidance may permit ROP demonstrations which allow a lower percentage of VOC emission reductions. In light of the entire set of language and Congress' evident intent under this subsection to maximize the opportunity for ozone reductions, we believe that section 182(c)(2)(C) confers on us the discretion to select, for purposes of determining equivalent reductions, a percentage of NO_X emission reductions which is reasonably calculated to achieve both the ozone reduction and attainment progress goals intended by Congress.

The NO_X control measures relied on by the Chicago Post-1996 ROP Plan, *i.e.*, Federal acid rain rules, Tier I vehicle emission standards, and non-road engine standards, are also relied upon in the Chicago ozone attainment demonstration submittal. Based on our review of all the information submitted in support of this attainment demonstration, it is our belief that the percentage of ozone reduction benefits achieved by application of NO_X controls, for both ozone reduction and attainment progress goals, is ''at least equivalent'' as that achieved by application of VOC controls. This is because both the NO_X and VOC controls are necessary if the area is to realize ozone reduction benefits and to ultimately attain the ozone NAAQS. That is, the ''basis for equivalency is the ability of a given control strategy (*i.e.*, any particular mix of NO_X and VOC emission reductions) to effect attainment of the ozone NAAQS by the designated attainment year.'' (NO_X substitution guidance at page 2).

Comment: The commenter argues that, assuming the State could claim ROP credit in the Chicago area for downstate NO_X reductions, there is no rational basis for excluding the East St. Louis area from the baseline.

Response: We disagree with the commenter because the exclusion of emission reductions from the East St. Louis ozone nonattainment area from the Chicago area ROP demonstration is reasonable and consistent with the Act's requirements.

Nothing in the Act or our NO_X substitution policy mandates that States which claim NO_X emission reductions from outside the nonattainment area must claim NO_X reductions state-wide. Rather, consistent with our NO_X substitution policy, a State need only claim those NO_X reductions as are necessary to meet the ROP plan's NO_X reduction target in a given milestone year. The State did not claim East St. Louis area NO_X reductions to meet the Chicago area Post-1996 ROP plan's 1999 NO_X reduction target. Illinois wanted to avoid potential ''double counting'' issues that it believes may arise by claiming emission reductions from one nonattainment area as part of an ROP demonstration in another nonattainment area. Since the State's decision to exclude these reductions does not interfere with the Chicago area's ability to meet its ROP and attainment objectives, we find no valid basis for rejecting the Chicago Area 9% ROP plan because it did not claim NO_X reductions from the East St. Louis area.

In conclusion, throughout the preceding section we have considered the commenter's objections to our proposed rulemaking, and, for the reasons presented above, we continue to believe that upwind NO_X reductions are creditable toward ROP under the Act. Moreover, we have determined that the State's demonstration meets the VOC/NO_X equivalency requirement in section 182(c)(2)(C) as interpreted under the Agency's NO_X substitution policy. Therefore, we are taking final action to approve the Chicago area post-1996 ROP plan.

VII. EPA's Approval of the TCMs in the Post-1996 ROP Plan

A. What Are TCMs?

TCMs are programs that encompass elements of transportation system management and/or transportation demand management. Transportation system management strategies are typically low capital intensive transportation improvements that increase the efficiency of transportation facilities and services. Transportation demand management involves policies, programs, and actions directed toward increasing the use of high occupancy vehicles (transit, carpooling, and vanpooling), and the use of bicycling and walking.

The Chicago Area Transportation Study (CATS), a Metropolitan Planning Organization (MPO), implements TCMs in the Chicago area. CATS implements a number of TCM projects to both reduce Vehicle Miles Traveled (VMT) and VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).

B. What Are the TCMs Included in Illinois Post-1996 ROP Plan?

The post-1996 ROP plan claims emission reduction credit for those TCMs implemented between 1990 and 1996 which were not included in the 15

Air Quality Planning and Standards, to Air Division Directors, August 8, 1994.

percent plan, and the TCMs implemented between 1996 and 1999.

CATS has documented TCM implementation and estimated emission reductions in the following documents:

(1) ''Transportation Control Measures Committal to the State Implementation Plan,'' November 5, 1992;

(2) ''Transportation Control Measures Contribution to the 15 percent Rate of Progress State Implementation Plan,'' December 9, 1993;

(3) ''Transportation Control Measures Contribution to the Control Strategy State Implementation Plan,'' March 9, 1995;

(4) ''Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan,'' March 22, 1996;

(5) ''Transportation Control Measures Contribution to the 9 percent Control Strategy State Implementation Plan,'' June 11, 1998; and,

(6) ''1999 Transportation Control Measures Contribution to the 9 percent Rate of Progress Control Strategy State Implementation Plan,'' December 9, 1999.

The November 5, 1992, document provides a comprehensive discussion of the TCM planning and implementation process in the Chicago region. Illinois submitted the December 9, 1993, and March 9, 1995, documents with the Chicago Area VMT Offset SIP revision, and provided the basis for emission reductions claimed as part of the 15 percent ROP Plan.

On September 21, 1995, we incorporated into the SIP 127 TCMs when we approved the Illinois' Vehicle Miles Traveled (VMT) Offset SIP (60 FR 48896). As indicated in the September 21, 1995 rulemaking, the combined VOC emission reduction from these TCMs is 2.78 TPD by 1996. Of this reduction, the State claimed 2 TPD in the 15 percent plan, which leaves 0.78 TPD for use in the post-1996 ROP plan.

The 1995, 1996, 1998, and 1999 TCM documents demonstrate an additional 1.22 TPD from TCMs which have been implemented by November 15, 1999. These TCMs include:

(1) Improved public transportation, such as fixed guideway transit and rail station infrastructure improvements;

(2) Traffic flow improvements, such as traffic signalization and intersection and road widening;

(3) Increased park and ride service, parking at major transit stations, and fringe parking to serve major highway facilities; and,

(4) Bicycle and pedestrian programs, including increased bicycle lanes and paths, racks and storage facilities, and sidewalks and walkways.

C. How Do TCMs Become Approvable as Revisions to the SIP?

States can take credit for TCMs that we have approved as revisions to the SIP. Our requirements for TCMs are summarized in the June 1993, guidance document, ''Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans,'' dated June 1993.

The required elements are:

(1) A complete description of the measure, and, if possible, its estimated emission reduction benefit;

(2) Evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure;

(3) Evidence that funding will be available to implement the measure;

(4) Evidence that all necessary approvals have been obtained from all appropriate government offices;

(5) Evidence that the implementing agencies have adopted a complete schedule to plan, implement, and enforce the measure; and,

(6) A description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

D. Are the Chicago Area 1996–1999 TCMs Approvable?

The TCM documents cited above provide the necessary documentation to incorporate into the SIP the TCMs implemented between 1996 and 1999 in the Chicago ozone nonattainment area.

VIII. EPA Review of the Illinois Post-1996 ROP Plan

A. Why Is the Illinois Post-1996 ROP Plan Approvable?

We reviewed the documentation submitted with the Illinois post-1996 ROP plan. From this review, we find that the plan is approvable.

The State provided sufficient justification that the attainment area NO_X reductions will reduce ozone concentrations in the Chicago ozone nonattainment area. Illinois also correctly calculated, following our guidance documents, the emission reduction needed to meet the 9 percent ROP reduction requirement. The plan's control measures are creditable because the emissions reductions achieved are real, permanent, and enforceable. All claimed emission reductions from the plan's control measures occurred by November 15, 1999, the Act's deadline by which creditable reductions are to occur.

The State's emission reduction estimates for the control strategies follow our guidance documents, where applicable, and are adequately documented with acceptable emission control assumptions.

Finally, the post-1996 ROP plan shows that it will achieve a reduction of ozone precursor emissions sufficient to achieve the required ROP toward attaining the 1-hour ozone NAAQS in the Chicago ozone nonattainment area.

COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS

	TPD
VOC Reduction Needed to Meet 2 percent ROP	121.79
VOC Reduction Needed to Meet 3 percent Contingency	31.11
VOC Reduction Needed for ROP and Contingency	152.90
Total Creditable VOC Reduction	156.89
NO_X Reduction Needed to Meet 7 percent ROP	242.52
Total Creditable NO_X Reduction	261.97

For these reasons, we are approving Illinois' Chicago Area post-1996 ROP plan, as meeting the requirements of section 182(c)(2)(B).

B. Why Is the Contingency Measure Portion of the Plan Approvable?

The post-1996 ROP plan achieves, in addition to the required ROP VOC and NO_X emission reductions, a 3 percent reduction in VOC emissions through creditable control measures. For this reason, the contingency measure portion of the post-1996 ROP plan satisfies the contingency measure requirements of the Act. We therefore approve the contingency measure portion of the plan.

IX. Transportation Conformity Mobile Source Budget

In Illinois' December 17, 1999, supplemental submittal, the State clearly identified in the proposed post-1996 ROP plan the establishment of the 1999 motor vehicle emissions budget of 279.3 TPD of VOC. The 1999 budget in the supplemental submittal is a revision to the budget in the earlier ROP submission. The revisions in the credit granted for the control strategies resulted in a change to the 1999 on-road mobile source emissions total. This emissions level serves as the emissions budget for determining transportation conformity. This **Federal Register** approval also approves the 1999 on-road mobile source budget of 279.3 TPD of VOC.

X. Final Rulemaking Action

In this rulemaking action, we are approving Illinois' SIP revisions, submitted on December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, establishing the post-1996 ROP plan and contingency measures for the Chicago ozone nonattainment area. We are approving certain TCMs which were submitted with the post-1996 ROP plan and were implemented between 1996 and 1999. We are also approving the 1999 on-road mobile source budget of 279.3 TPD of VOC.

XI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective January 17, 2001.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: December 5, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (w), (x) and (y) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(w) *Approval*—On December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, Illinois submitted a post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. This plan reduces ozone precursor emissions by 9 percent from 1990 baseline emissions by November 15, 1999. This plan also supports a mobile source emissions budget of 279.3 tons/day of volatile organic compounds for transportation conformity purposes.

(x) *Approval*—On December 18, 1997, Illinois submitted a contingency measure plan as part of the Chicago Area post-1996 Rate of Progress Plan. This plan reduces volatile organic compound emissions in the Chicago ozone nonattainment area by 3 percent from 1990 baseline emissions by November 15, 1999.

(y) *Approval*—On December 18, 1997, Illinois submitted Transportation Control Measures (TCMs) as part of the post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area. The TCMs being approved are listed in the following documents published by the Chicago Area Transportation Study: ''Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan,'' March 22, 1996; ''Transportation Control Measures Contribution to the 9 percent Control Strategy State Implementation Plan,'' June 11, 1998; and ''1999 Transportation Control Measures Contribution to the 9 percent Rate of Progress Control Strategy State Implementation Plan,'' December 9, 1999.

[FR Doc. 00–32026 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA078–01–7211b; A–1–FRL–6914–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This submittal contains a revised Stage II vapor recovery regulation. The intended effect of this action is to approve Massachusetts' revised Stage II rule. This action is being taken in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on January 17, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What revisions did Massachusetts make to its Stage II rule?
Why is EPA approving Massachusetts' revised Stage II rule?
What comments did EPA receive on its proposed approval of this rule and what is EPA's response to these comments?

What Action Is EPA Taking?

EPA is approving Massachusetts' revised 310 CMR 7.24(6) ''Dispensing of

Vehicle Fuel'' and incorporating this rule into the Massachusetts SIP. The Massachusetts Department of Environmental Protection (DEP) submitted the revised rule to EPA for parallel processing on August 9, 2000 and submitted the final version of the rule on September 11, 2000. EPA published a notice of proposed rulemaking (NPR) for Massachusetts' revised Stage II rule on August 21, 2000 (65 FR 50669).

What Revisions Did Massachusetts Make to its Stage II Rule?

In order to justify the level of emission reductions claimed in its SIP, Massachusetts added the following new provisions to its Stage II rule: (1) A provision explicitly requiring the installation of CARB (California Air Resources Board) approved Stage II systems; (2) a provision requiring annual Stage II system compliance testing and certification; and (3) a provision explicitly requiring weekly visual inspections of the Stage II system components. In addition, a provision addressing the direct refueling of a motor vehicle from a tank truck is included in Massachusetts' revised Stage II rule. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP. Each of the four new provisions are discussed in more detail in EPA's NPR.

Why Is EPA Approving Massachusetts' Revised Stage II Rule?

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. Previously, the resources DEP devoted to Stage II enforcement and the wording of the existing rule called into question the Stage II reductions assumed in the Massachusetts SIP. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

What Comments Did EPA Receive on its Proposed Approval of This Rule and What Is EPA's Response to These Comments?

EPA received two comment letters pursuant to the publication of its proposed approval of Massachusetts' revised Stage II rule. Comments were submitted by ExxonMobil Refining and Supply Company and by the Massachusetts Petroleum Council. A summary of the comments received and EPA's response is presented below.

Comment #1: ExxonMobil commented that the requirements for facility compliance certification should be more specific in outlining who should certify the various operating and testing requirements, noting that their company owns, and directly operates with company employees, certain retail stores but also leases certain stores to independent dealer/operators who directly operate these stores with their own employees.

Response: The revised 310 CMR 7.24(6)(c)(8) states, ''Any certification submitted * * * shall be signed by an individual who is a responsible official regarding the Stage II system * * *.'' The rule, however, is silent as to who is the appropriate responsible official. As stated in the response to comments document [1] prepared by the DEP, the DEP intends to leave the identification of the responsible official to be worked out between each facility's owner, operator, lessee, or controller on a case-by-case basis. The DEP document also notes that the responsible official's compliance certification may rely, as necessary, on the inquiry of other parties who may have responsibility for various aspects of a facility's compliance program. Specifically, 310 CMR 7.24(c)(8)(a) requires the responsible official to certify that ''I personally examined the foregoing and am familiar with the information contained in this document and all the attachments and that, *based on my inquiry of those persons immediately responsible for obtaining the information,* I believe that the information is true, accurate and complete.'' (Emphasis added.) Furthermore, in response to industry's concerns, DEP added a provision to the final rule regarding the person immediately responsible for obtaining certification information. Specifically, 310 CMR 7.24(c)(9) states, ''Any person immediately responsible for obtaining information referenced in 310 CMR 7.24(6)(c)(8)(a) who knowingly and willfully makes false, inaccurate, incomplete, or misleading statements pursuant to any certification or notification required under 310 CMR 7.24(6), may be in violation of 310 CMR 7.24(6).'' These provisions should address the concern that, in some cases, the person providing the certification may not be the person immediately responsible for obtaining all of the information.

Comment #2: Both commenters called into question the DEP's basis for adopting revisions to its Stage II vapor recovery regulation.

Response: EPA believes there was a justifiable basis for DEP proceeding with revisions to its Stage II rule. Previously, EPA raised concerns regarding the lack of Stage II enforcement oversight by the DEP and the high rate of non-compliance by facilities. Specifically, the DEP was not conducting annual inspections of each Stage II subject facility as recommended in EPA's Stage II enforcement guidance.[2] Also, as indicated in DEP's background document,[3] DEP conducted inspections of 122 facilities in 1997 and found that only 54% of the inspected facilities were correctly operated and maintained. Clearly the DEP needed to take action to ensure that the anticipated Stage II emissions reductions would be achieved. Additionally, it is not disputed that the measures in this rule, taken as a whole, will reduce emissions associated with activities covered by the rule, and that the amended rule will be more enforceable. Disputes about the adequacy of the state's substantive basis for adopting these rules are matters for the state. Procedurally, the rule submission appears sound. Therefore, the comment does not provide EPA with suitable justification for rejecting a state submission that enhances the SIP's stringency.

EPA is approving Massachusetts' revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

Final Action

EPA is approving Massachusetts' revised 310 CMR 7.24(6) ''Dispensing of Motor Vehicle Fuel'' and incorporating this rule into the Massachusetts SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

[1] ''Response to Comments Document: Proposed Amendments to Stage II Vapor Recovery Program,'' September 2000.

[2] ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs,'' Office of Mobile Sources, October 1991.

[3] ''Background Document for Proposed Revisions to 310 CMR 7.24(6) dispensing of Motor Vehicle Fuel (The State II Vapor Recovery Program),'' December 1999.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: November 28, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(116) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(116) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 9, 2000, September 11, 2000 and July 25, 1995.

(i) Incorporation by reference.

(A) 310 CMR 7.24(6) ''Dispensing of Motor Vehicle Fuel,'' effective in the Commonwealth of Massachusetts on September 29, 2000.

(B) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on September 29, 2000: ''commence operation''; ''emergency situation''; ''executive order''; ''Stage II system''; ''substantial modification''; ''vacuum assist system''; and ''vapor balance system.''

(C) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on June 30, 1995: ''emergency motor vehicle;'' and ''tank truck.''

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations 310 CMR 7.00 and 310 CMR 7.24(6) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00	Definitions	07/25/95 08/09/00 9/11/00	12/18/00	[Insert *FR* citation from published date].	116	Definitions associated with State II vapor recovery rule.
*	*	*	*	*	*	*
310 CMR 7.24(6)	Dispensing Motor Vehicle Fuel.	08/09/00 09/11/00	12/18/00	[Insert *FR* citation from published date].	116	Rule revised to include annual compliance testing and certification.
*	*	*	*	*	*	*

[FR Doc. 00–32024 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6918–4]

Protection of Stratospheric Ozone: Notice 14 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Acceptability; Request for Information.

SUMMARY: The Environmental Protection Agency (EPA) is expanding the list of acceptable substitutes for ozone-depleting substances (ODS) under our Significant New Alternatives Policy (SNAP) program. Substitutes are for the refrigeration and air conditioning, foams, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. Today's action also requests information from readers on the composition and safety of certain refrigerants for motor vehicle air conditioners; the possible expansion of the SNAP program to include review of, and potentially to establish use conditions for, operations that involve manual (hand) cleaning with solvents for precision, electronics, and metals cleaning; and the possible restriction of non-aerosol solvent substitutes to equipment that meets the cleaning equipment standards in the National Emission Standards for Halogenated Solvent Cleaning. Finally, this action updates readers on the SNAP program's review of n-propyl bromide for use as a substitute for ozone-depleting solvents used in the non-aerosol solvents cleaning, aerosol solvents and propellants, and adhesives, coatings and inks sectors.

EFFECTIVE DATE: December 18, 2000.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2141, by e-mail at sheppard.margaret@epa.gov, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, N.W., Washington, D.C., 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/.

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foams
C. Non-Aerosol Solvent Cleaning
D. Aerosol Solvents and Propellants
II. Request for Information on Refrigerants for Motor Vehicle Air Conditioners
III. Request for Information on Expanding SNAP Non-Aerosol Solvent Cleaning Program Review to Include Operations that Involve Manual Precision, Electronics, or Metals Cleaning with Solvents
IV. Request for Information on Restricting SNAP Acceptability Decisions in the Non-Aerosol Solvent Cleaning Sector to Operations that Involve the Use of Equipment that Meets Equipment Standards in the National Emission Standards for Halogenated Solvent Cleaning
V. Status of EPA Review of n-Propyl Bromide
VI. Section 612 Program
A. Statutory Requirements
B. Regulatory History
VII. Additional Information
VIII. References
Appendix A—Summary of Acceptable Decisions

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and air conditioning, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996. You also can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/chron.html.

The sections below present a detailed discussion of the acceptability decisions EPA is making today. The table summarizing today's listing decisions is in Appendix A. The comments contained in the table in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments section of the table is not mandatory for use of a substitute, unless the comments refer to applicable regulatory requirements. Nevertheless, EPA strongly encourages users to use these substitutes in a manner consistent with the recommendations in the comments section. In many instances, the comments simply refer to standard operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of these recommendations, if adopted, would not require significant changes in existing operating practices for the affected industry. In addition, such

recommendations should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute.

A. Refrigeration and Air Conditioning

1. HFE–7100

EPA's Decision

Hydrofluoroether 7100 is acceptable for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems using:

- CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502 in industrial process refrigeration;
- CFC–12 and R–502 in retail food refrigeration; and
- CFC–113, R–13B1, and R–503 in very low temperature refrigeration.

HFE–7100 is also acceptable as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22 in retrofit and new equipment in non-mechanical heat transfer. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether.

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These values are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA's Decision

Hydrofluoroether 7200 is acceptable for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems using:

- CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502 in industrial process refrigeration;
- CFC–12 and R–502 in retail food refrigeration; and
- CFC–113, R–13B1, and R–503 in very low temperature refrigeration.

HFE–7200 is also acceptable as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22 in retrofit and new equipment in non-mechanical heat transfer. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal.

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. and 4. FOR12A and FOR12B

EPA Decision

The chemical blends submitted to EPA with the unregistered trade names of FOR12A and FOR12B are acceptable as substitutes for CFC–12 in the following end-uses:

- industrial process refrigeration and air-conditioning
- cold storage warehouses
- refrigerated transport
- retail food refrigeration
- ice machines
- vending machines
- water coolers
- centrifugal chillers
- reciprocating chillers
- household refrigerators and freezers

Inha University of Inchon, Korea and TechnoChem Co., Ltd, the joint submitters of FOR12A and FOR12B, claim that the compositions of these blends are confidential business information.

Environmental Information

The blends do not contain any significant ozone-depleting chemical, but do contain constituents with a GWP. The GWP for the FOR12A blend is approximately 1100 and the GWP for the FOR12B blend is approximately 1000. These values are lower than the GWP of the substances that FOR12A and FOR12B would be replacing. The contribution of these constituents to global warming will be minimized in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. This section prohibits venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery.

Flammability and Fractionation Information

Fractionation and flammability tests by the submitters have determined that although a constituent of each blend is flammable, FOR12A and FOR12B as blended are not flammable. Further testing has shown that FOR12A and FOR 12B do not become flammable after leakage.

Toxicity and Exposure Data

Both blends have low toxicity. Only one of the constituents of the blends exhibits toxicity, and this substance has an 8-hour acceptable exposure limit of 150 to 170 ppm.

5. NU–22

EPA Decision

NU–22, an HFC blend, is acceptable as a substitute for HCFC–22 in new and retrofit applications in the following end-uses:

- industrial process refrigeration and air-conditioning
- centrifugal chillers
- reciprocating chillers
- residential air conditioning and heat pumps
- residential dehumidifiers
- refrigerated transport
- motor vehicle air conditioning (buses only)

ICOR International, the submitter of NU–22, claims that its composition is confidential business information.

Environmental Information

The blend has no ozone-depleting potential. The blend contains constituents exhibiting GWPs, with the highest GWP being 1600. This value is lower than the GWP of the substance that NU–22 would be replacing. The contribution of this blend to global warming will be minimized in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. This section prohibits venting or release of substitutes for class I and class II ozone

depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery.

Flammability and Fractionation Information

Fractionation and flammability tests by the submitter have determined that although one component of this blend is flammable, this refrigerant blend is not flammable.

Toxicity and Exposure Data:

This blend's constituents are all non-toxic.

6. SP34E

EPA's Decision

SP34E is acceptable for use as a substitute for CFC–12 in the following end uses:

- Household refrigerators and freezers (retrofit and new)
- Refrigerated transport (retrofit and new)
- Retail food refrigeration (retrofit and new)
- Cold storage warehouses (retrofit and new)
- Vending machines (retrofit and new)
- Water coolers (retrofit and new)
- Reciprocating chillers (retrofit and new)

SP34E is acceptable for use as a substitute for CFC–12, subject to use conditions for motor vehicle air conditioning (retrofit and new).

SP34E is an HFC refrigerant with additives. Solpower, the submitter, has claimed the composition is confidential business information.

Conditions for use in Motor Vehicle Air Conditioning Systems:

Regulations regarding recycling and prohibiting venting issued under section 609 of the Clean Air Act apply to this blend.

On October 16, 1996, (61 FR 54029), EPA promulgated a final rule that prospectively applied certain conditions on the use of any refrigerant used as a substitute for CFC–12 in motor vehicle air conditioning systems (Appendix D of subpart G of 40 CFR part 82). That rule provided that EPA would list new refrigerants in future notices of acceptability. Therefore, the use of SP34E as a CFC–12 substitute in motor vehicle air conditioning systems must follow the standard conditions imposed on previous refrigerants, including:

- The use of unique fittings designed by the refrigerant manufacturer,
- The application of a detailed label,
- The removal of the original refrigerant prior to charging with SP34E, and
- The installation of a high-pressure compressor cutoff switch on systems equipped with pressure relief devices.

The October 16, 1996 rule gives full details on these use conditions.

You must use the following fittings to use SP34E in motor vehicle air conditioning systems:

Fitting type	Diameter (inches)	Thread Pitch (threads/inch)	Thread Direction
Low-side service port	.5 (8/16)	18	Left
High-side service port	.4375 (7/16)	14	Right
Large containers (>20 lb.)	.5 (8/16)	18	Left

Currently, there is no fitting for small cans. Thus, small cans may not be used for distribution of this product until either cans are developed that can use the fittings above or EPA issues a future acceptability notice identifying an alternative fitting. The labels will have a tan background and black text.

Required Changes in Technology

When using this refrigerant, you would need to use a filter dryer appropriate for use with R–134a. The submitter claims that SP34E is a replacement for CFC–12 that allows the use of mineral oil instead of synthetic oil. EPA has not evaluated any claims about the effectiveness of SP34E or whether it may be used with mineral oil. You may find materials in Docket A–91–42 concerning these claims.

Environmental Information

SP34E has an ozone depletion potential (ODP) of zero. Some of the constituents of SP34E have GWPs, with the highest GWP over 100 years being 1300. This value is lower than the GWP of the substance that SP34E would be replacing. The longest-lived constituent has an atmospheric lifetime of 14.6 years. The contribution of this blend to global warming will be minimized through requirements under sections 608(c)(2) and 609 of the Clean Air Act. Section 608(c)(2) prohibits venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and requires proper disposal of these substances, such as recycling or recovery. Section 609 requires refrigerant recycling and training and certification for people repairing or servicing motor vehicle air conditioning systems.

Flammability Information

Some constituents of the blend are flammable. Flammability testing by an independent laboratory has determined that SP34E as blended is not flammable. SP34E has no flash point.

Toxicity and Exposure Data

SP34E exhibits low toxicity. Two of its constituents have manufacturer acceptable exposure limits (AELs) of 1000 ppm over an 8-hour time-weighted average. For the remaining constituent, the Occupational Safety and Health Administration (OSHA) has issued a permissible exposure limit of 1000 ppm over an 8-hour time-weighted average. SP34E was submitted to the Agency as a Premanufacture Notice (PMN) under the Toxic Substances Control Act.

7. Correction: ''Furan'' Corrected to Perfluoro (oxacyclopentane)

The April 11, 2000 notice of acceptability at 65 FR 19327 incorrectly said that EPA was approving ''furan'' as a substitute for CFC–114 for use in uranium isotope separation processing (retrofit uses). The proper name of the substitute approved for this purpose is perfluoro (oxacyclopentane). It may also be called octafluorotetrahydrofuran or furan, octafluorotetrahydro. Its formula is c-C_4F_8O. Perfluoro (oxacyclopentane) is a cyclic perfluoroether (PFE), with similar atmospheric properties to those of perfluorocarbons (PFCs): long atmospheric lifetime and high global warming potential. Therefore, the same care as recommended for PFCs should be applied in handling this cyclic PFE in order to minimize emissions.

B. Foams

1. Methyl Formate

EPA Decision

Methyl formate is acceptable as a substitute for CFCs and HCFCs in the following end-uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;

- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels; and
- Polyurethane integral skin foam.

Environmental Information

Methyl formate has no ODP and very low or zero global warming potential (GWP). Users should be aware that methyl formate is a volatile organic compound (VOC) and may be subject to state or federal requirements developed under Title I of the Clean Air Act. Also, because methyl formate is considered hazardous, spills and disposal should be handled in accordance with requirements of the Resource Conservation and Recovery Act (RCRA).

Flammability Information

Methyl formate is flammable and should be handled with proper precautions. Use of methyl formate will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173).

Toxicity and Exposure Data

Methyl formate is toxic and should be handled with proper precautions. Use of methyl formate will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment, observing permissible exposure limits, and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173). OSHA established a permissible exposure limit for methyl formate of 100 ppm for a time-weighted average over an eight-hour work shift. The National Institute of Occupational Safety and Health and the American Conference of Governmental Industrial Hygienists recommend a 15-minute short term exposure limit (STEL) of 150 ppm.

C. Non-Aerosol Solvent Cleaning

1. HFE–7100

EPA Decision

Hydrofluoroether 7100 is acceptable as a substitute for HCFC–141b and HCFC–22 in metals cleaning, precision cleaning, and electronics cleaning applications. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. EPA previously found HFE–7100 acceptable as a substitute for CFC–113 and methyl chloroform in metals cleaning, precision cleaning, and electronics cleaning applications (61 FR 47015).

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These values are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA Decision

Hydrofluoroether 7200 is acceptable as a substitute for HCFC–141b and HCFC–22 in metals cleaning, precision cleaning, and electronics cleaning applications. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal. EPA previously found HFE–7200 acceptable as a substitute for CFC–113 and methyl chloroform in metals cleaning, precision cleaning, and electronics cleaning applications (64 FR 68039).

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. Heptafluorocyclopentane

EPA Decision

Heptafluorocyclopentane is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b in precision cleaning, electronics cleaning, and metals cleaning applications within the non-aerosol solvent cleaning sector. Heptafluorocyclopentane is also known as HFCPA and $C_5H_3F_7$, and by the trade name Zeorara-H®.

Environmental Information

HFCPA is a hydrofluorocarbon, and thus has no ozone-depleting potential. The GWP is 250 over a 100-year time horizon, and the atmospheric lifetime is 1.8 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFCPA would be replacing.

Flammability Information

HFCPA has no flash point below its boiling point.

Toxicity and Exposure Data

Although this acceptability determination is not subject to any use conditions or narrowed use restrictions, EPA expects users to adhere to the manufacturer's recommended exposure guideline of 123 ppm over an eight-hour time-weighted average, with a ceiling of 500 ppm.

4. HFC–365mfc

EPA Decision

HFC–365mfc is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b in precision cleaning, electronics cleaning, and metals cleaning applications within the non-aerosol solvent cleaning sector. HFC–365mfc is a halogenated alkane.

Environmental Information

HFC–365mfc contains no chlorine or bromine and does not contribute to ozone depletion. The GWP is 790 over a 100-year time horizon and the atmospheric lifetime is 10.2 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFC–365mfc would be replacing.

Flammability Information

HFC–365mfc has no flash point. The lower and upper flammability limits are 3.8% and 13.3%, respectively.

Toxicity and Exposure Data

The submitting manufacturer has set a preliminary acceptable exposure limit (AEL) of 500 ppm.

D. Aerosol Solvents and Propellants

1. HFE–7100

EPA Decision

Hydrofluoroether 7100 is acceptable as a substitute for CFC–11 and HCFC–141b as a solvent in aerosol products. Hydrofluoroether 7100 is also known as HFE–7100; $C_4F_9OCH_3$; $C_6F_9OH_5$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. EPA previously found HFE–7100 acceptable as a substitute for CFC–113 and methyl chloroform in aerosol solvents (61 FR 47015).

Environmental Information

HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a global warming potential (GWP) of 390 over a 100-year time horizon. These are lower than the atmospheric lifetime and GWP of the substances HFE–7100 would be replacing.

Flammability Information

HFE–7100 is non-flammable.

Toxicity and Exposure Data

HFE–7100 exhibits low toxicity, with a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

2. HFE–7200

EPA Decision

Hydrofluoroether 7200 is acceptable as a substitute for CFC–11, and HCFC–141b as a solvent in aerosol products. Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_5F_{10}H_2$; and ethoxynonafluorobutane, iso and normal. EPA previously found HFE–7200 acceptable as a substitute for CFC–113 and methyl chloroform in aerosol solvents (64 FR 68039).

Environmental Information

HFE–7200 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 55 over a 100-year time horizon. These values are much lower than the atmospheric lifetime and GWP of the substances HFE–7200 would be replacing.

Flammability Information

The flammability range in air is 2.4–12.4%. HFE–7200 has no flashpoint.

Toxicity and Exposure Data

The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). The Agency also expects that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

3. HFC–365mfc

EPA Decision

HFC–365mfc is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b as an aerosol solvent. HFC–365mfc is a halogenated alkane.

Environmental Information

HFC–365mfc contains no chlorine or bromine and does not contribute to ozone depletion. The GWP is 790 over a 100-year time horizon and the atmospheric lifetime is 10.2 years. These values are either lower or comparable to the GWPs and atmospheric lifetimes of the substances HFC–365mfc would be replacing.

Flammability Information

HFC–365mfc has no flash point. The lower and upper flammability limits are 3.8% and 13.3%, respectively.

Toxicity and Exposure Data

The submitting manufacturer has set a preliminary acceptable exposure limit (AEL) of 500 ppm.

II. Request for Information on Refrigerants for Motor Vehicle Air Conditioners

EPA requests information on the refrigerants Enviro-Safe, Red Tek, Maxi-Frig, ES–12A, and Auto Cool. EPA has received numerous inquiries regarding the SNAP acceptability of the above refrigerants for use in motor vehicle air conditioners (MVACs). Materials disseminated through mailings and the internet (Air Docket A–91–42, item IX–B–60) have made consumers question whether the products listed above are acceptable substitutes under the SNAP program for CFC–12 (R12 or freon) and other ozone-depleting CFC–12 substitutes. Under Section 612(e) of the CAA, any person who produces a substitute for a CFC is required to submit information to EPA at least 90 days before the substitute is introduced into interstate commerce. The refrigerants listed above have not been submitted to EPA for review under the SNAP program. Therefore, the Agency believes that they cannot be sold as replacements for CFC–12 or other ozone-depleting CFC substitutes in MVACs.

Additionally, based on advertising materials, Material Safety Data Sheets (MSDSs) and independent laboratory testing (Air Docket A–91–42, item IX–B–60), EPA believes the refrigerants listed above may be flammable hydrocarbon-based blends. In June 1995, flammable refrigerants were listed as unacceptable as substitutes for CFC–12 in MVACs because a comprehensive risk assessment on the use of flammable refrigerants had not been submitted to EPA (60 FR 31092). EPA welcomes the submission of such a risk assessment. However, until EPA receives sufficient information on the potential risks of flammable refrigerants in MVACs, all flammable refrigerants are unacceptable as substitutes for CFC–12 and ozone-depleting freon substitutes in MVACs, unless specifically listed as acceptable. Consumers should also be aware that the following 19 states ban the use of flammable refrigerants in MVACs: Arkansas, Arizona, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Nebraska, North Dakota, Oklahoma, Texas, Utah, Virginia, Wisconsin, Washington, and the District of Columbia. For further information about flammable refrigerants, see EPA's web site (http://www.epa.gov/spdpublc/title6/snap/hc12alng.html).

EPA requests information on the composition and the flammability of Enviro-Safe, Red Tek, Maxi-Frig, ES–12A, and Auto Cool. We also would welcome any formal risk assessment on these refrigerants.

III. Request for Information on Expanding SNAP Program Review of the Non-Aerosol Solvent Cleaning Sector to Include and Potentially to Establish Use Conditions for Operations that Involve Manual Precision, Electronics, or Metals Cleaning

In the non-aerosol solvent cleaning sector, EPA has historically applied SNAP review only to large industrial cleaning applications, including cold cleaning and vapor degreasing and defluxing operations, where ozone-depleting substances have been historically used. Within industrial cleaning, the three main applications that in the past used ozone-depleting solvents are precision cleaning, electronics cleaning, or general metals cleaning, and solvents used in those applications are subject to SNAP

review.[1] The preamble language to the original SNAP rule of March 18, 1994 provided EPA's interpretation that its SNAP regulation excludes some applications within metals, precision and electronics cleaning. Specifically, the preamble stated that:

The SNAP determinations issued in the solvent cleaning sector focus on substitutes for CFC–113 and methyl chloroform (MCF) when used in industrial cleaning equipment, since this application comprises the largest use of ozone-depleting solvents. . . . Other applications for ozone-depleting solvents exist as well, such as in dry cleaning of textiles or in hand cleaning or maintenance cleaning as a spray. In addition, these solvents are used as bearer media (such as lubricant carriers), mold release agents, component testing agents, or in other non-cleaning applications. CFC–11 is also occasionally used as a cleaning solvent in specialized applications. . . . The Agency intends to exclude cleaning substitutes for CFC–113, MCF and CFC–11 in these applications—with the exception of aerosol substitutes—from the SNAP determinations at this time. As a result, the Agency is not at this time issuing any determinations on acceptability of such substitutes, and will neither approve nor restrict their uses.

(59 FR 13090) Based on this language, EPA has not required SNAP review of substitutes for CFC–113, methyl chloroform and other ozone-depleting solvents when those substitutes are used in the following specific manual cleaning applications for metals, electronics or precision cleaning:

- Bearer media (e.g., substitutes for CFC–113 in depositing lubricants on medical catheters);
- Plasma etching;
- Mold release agents (for nonaerosol applications);
- Motor vehicle air conditioning flushing;
- Hand wiping or maintenance cleaning with a non-aerosol spray;
- Dry cleaning of textiles;
- Substitutes for CFC–11 (although note that EPA reviews substitutes to CFC–11 when it is used as an aerosol propellant); and
- Flushing of oxygen systems.

There are a wide variety of cleaning operations. Some of these operations are more emissive, and present more risks to workers handling the equipment, than others. EPA is concerned that for certain solvents reviewed under the SNAP program, it may not make sense to determine that use of that compound is acceptable without conditions or restrictions, or alternatively that it is unacceptable, in both manual and machine cleaning operations. EPA is considering pursuing the use of certain narrowed use restrictions on SNAP acceptability decisions for manual metals, electronics, or precision cleaning. We believe that this would better implement the intent of the Clean Air Act Section 612 mandate to evaluate the overall health and environmental risks associated with potential substitutes to ozone-depleting substances.

Because of the emissive nature of many manual cleaning operations and relatively high volumes of ozone-depleting solvents and their substitutes used in manual cleaning,[2] EPA is now considering expanding the scope of SNAP review in the non-aerosol solvent cleaning sector to include one or more of the manual cleaning applications above for metals cleaning, electronics cleaning, or precision cleaning.[3] In most manual cleaning operations, solvent use is not contained within equipment, and the potential for soil and groundwater contamination is a major issue. Contamination is also a concern where solvents are allowed to fall on concrete or other porous floors. In addition to solvents causing soil and groundwater contamination, the evaporation of solvents often results in atmospheric damage. Many solvents used in manual cleaning are volatile organic compounds (VOCs), which contribute to ground-level ozone pollution. In addition, a significant number of solvents contribute to global warming and/or to stratospheric ozone depletion. Human health risk is another concern: cleaning manually rather than with automated processes will more likely result in significant worker exposures to solvents, some of which have been assigned, either by manufacturers, governmental agencies, or voluntary standard-setting organizations, relatively low exposure limits due to their potential short-term or long-term toxicity. Other potential hazards to workers from manual cleaning include skin absorption of solvents, contact dermatitis, contact burns, exposure to flammable vapors, and exposure to compounds that may react with chemicals from other processes.

Manual cleaning occurs in electronic and precision cleaning as well as in metals cleaning. Manual cleaning encompasses a diverse set of cleaning operations. It can involve organic solvents, water-based cleaners, impingement cleaning, and/or mechanical cleaning. It is generally, but not always, cold cleaning (i.e., cleaning where the removal of soils is accomplished by solvents, solvent blends, or water-based cleaners that are at room temperature or are otherwise below their boiling points). Sometimes the applications are small-scale; in some applications, the part to be cleaned may be several stories high. Manual cleaning may be one or a few steps of an overall cleaning process that involves hundreds or thousands of cleaning steps. Techniques of manual cleaning include:

- Non-automated wiping, swabbing, scraping, sanding, brushing, pressure-washing or abrasively blasting surfaces with a cloth, swab, brush, sponge, pad or other implement that is moistened with solvent or other cleaner, manually applying the solvent or other cleaner directly to surfaces to agitate the surface soils, and then wiping, swabbing, brushing or pressure-washing the surfaces;
- Submerging parts in a solution that includes water, solvents and/or surfactants (this may include ultrasonic cleaning); and
- Using spraying equipment, whether the spray is from an aerosol can, other pressurized can, or non-pressurized container (such as a pump).

Swabs are generally used in specific spots, wipers can cover a larger specific area, and sprays are used over a more general area. Manual cleaning can be performed with either aqueous or solvent-based cleaning fluids or sprays, and includes the following operations:

- Spot cleaning,

[1] In a February 24, 1998 Notice of Acceptability in the **Federal Register** (63 FR 9151), EPA clarified the definitions of these applications as follows:

''(1) Electronics Cleaning. Primarily the removal of flux residues from wiring assemblies after a soldering operation has been completed. This is considered a high value end use application where performance is critical.

''(2) Metals Cleaning. The removal of a wide variety of contaminants from metal objects during a manufacturing or maintenance process. At each stage in the manufacturing process contaminants must be removed from the piece to ensure a clean metal surface for the next step in the production process or for final consumption. These parts tend to be metal objects ranging from fully assembled aircraft down to small metal parts stamped out in high volume. These contaminants are most often greases, cutting oils, coatings, large particles, and metal chips.

''(3) Precision Cleaning. Applies to components and surfaces of any composition for which an extremely high level of cleanliness is necessary to ensure satisfactory performance during the manufacturing process or in final consumption. This end use is characterized as very high value end use segment based on a non-cost criteria. Examples of such criteria would be: high value products, protection or safeguarding of human life, compatibility concerns with plastics, temperature and mechanical stress limitations, precision mechanical assemblies/components with demanding machining tolerances or complex geometrics, and base or mix of metals readily pitted, corroded, eroded or otherwise compromised''.

[2] EPA uses the terms ''hand cleaning'' and ''manual cleaning'' synonymously.

[3] Manual cleaning has never been excluded from the scope of SNAP in the aerosol solvents and propellants sector, or in the adhesives, coatings and inks sector.

• Cleaning large metal surfaces such as milking machines and other tanks and vessels,
• Cleaning small batches of parts, and
• Cleaning articles such as medical examination instruments, optical instruments, labware or circuit boards, and process equipment.

Examples of applications that involve manual cleaning include:
• Removal of paints, mineral deposits, dirt and oils during the overhauling, repairing, or rebuilding of automotive parts, machinery parts or instruments,
• Removal of residual rosin flux during the manufacture and service of electronics assemblies,
• Removal of rosin flux, oil, dirt, and mineral deposits during the repair of heavy-use military assemblies,
• Removal of burnt-on carbonized and/or caramelized oil during the repair of compressors after burnout,
• Removal of flux, oils, polishing compounds and fingerprints from large, critical aerospace components,
• Removal of oils, fluxes and fingerprints from high-value, critical biomedical devices, and
• Removal of residue polishing compounds in precision optics and in semiconductor manufacturing wafer fabrication.

EPA has previously regulated manual cleaning with solvents in the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under § 112(b) of the Act. The September 1, 1995 NESHAP for Aerospace Manufacturing and Reworking Facilities defines ''hand-wipe cleaning operation'' as ''the removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.'' (60 FR 45958) The NESHAP rule differentiates between hand-wipe cleaning operations, spray gun cleaning, and ''flush cleaning,'' in which contaminants are removed by ''passing solvent over, into, or through the item being cleaned.'' (60 FR 45958) Similarly, EPA is considering differentiating between manual cleaning and other methods for solvent cleaning under the SNAP program.

As part of EPA's efforts to comply with the intent of the mandate in Section 612 of the Clean Air Act to evaluate the overall health and environmental risks associated with potential substitutes to ozone depleting substances, we are interested in receiving comments and information on the following:

• Appropriateness of SNAP review of ODS substitutes used in manual cleaning,
• Potential health and environmental benefits from SNAP review of solvents used in manual cleaning,
• Other solvent applications not currently reviewed under SNAP, but where SNAP review of solvents used in these applications may result in environmental benefits, and
• Consequences of the expansion of SNAP review into manual cleaning. For example, since HCFC–141b is already listed as unacceptable in all non-aerosol solvent cleaning applications (i.e., in precision, electronics, and metals cleaning), the use of HCFC–141b as a substitute for CFC–113 or methyl chloroform in manual wiping would automatically become prohibited if EPA were to promulgate a final rule expanding the scope of SNAP to include manual cleaning. In addition, when EPA promulgates rules in the future that list acceptability determinations for particular solvents, we could prohibit the use of those solvents in manual cleaning.

The Agency hopes that today's action will give the public an opportunity to provide input at an early stage in this decision-making process. If EPA pursues this expansion of the scope of SNAP review, we will do so through notice-and-comment rulemaking.

IV. Request for Information on Restricting SNAP Acceptability Decisions in the Non-Aerosol Solvent Cleaning Sector to Operations That Involve the Use of Equipment That Meets Equipment Standards in the National Emission Standards for Halogenated Solvent Cleaning

As discussed in the previous section of this action, EPA has historically applied SNAP review in the non-aerosol solvent cleaning sector only to large industrial cleaning applications where ozone-depleting substances have been historically used. Within industrial cleaning, the three main applications that in the past used ozone-depleting solvents are precision cleaning, electronics cleaning, or general metals cleaning. Solvents used in these applications are subject to SNAP review.

Each of these applications includes a wide range of cleaning operations and equipment: cold cleaning methods such as pail-and-brush, hand wipe, recirculating over-spray (''sink-on-a-drum'') parts washers, immersion cleaning into dip tanks with manual parts handling, automated immersion cleaning using multiple dip tanks, and either automated or manual immersion cleaning that incorporates ultrasonic or mechanical agitation, and heated cleaning methods such as heated dip tanks and vapor degreasing. Some of these operations are more emissive, and present more risks to workers handling the equipment, than others. The Agency is interested in pursuing regulatory options within the SNAP decisionary framework in order to better account for these differences. In other words, for certain solvents reviewed under the SNAP program, it may not make sense to determine that use of that compound is acceptable without conditions or restrictions, or alternatively that it is unacceptable, in all precision (or electronic, or metals) cleaning operations. EPA is interested in pursuing the use of certain narrowed use restrictions on SNAP acceptability decisions that would better implement the intent of the Clean Air Act Section 612 mandate to evaluate the overall health and environmental risks associated with potential substitutes to ozone-depleting substances.

EPA is specifically interested in receiving comments and information on the appropriateness of restricting SNAP acceptability decisions for newly submitted non-aerosol solvents to operations that involve the use of equipment that meets the requirements set forth in 40 CFR 63.462, Batch cold cleaning machine standards, and 40 CFR 63.463, Batch vapor and in-line cleaning machine standards, which are set forth in the national emission standards for halogenated solvent cleaning (''HSC NESHAP'').[4] Does it

[4] For reference, the HSC NESHAP provisions at 40 CFR 63.461 (July 1, 1999 revision) include the following definitions:

Batch cleaning machine means a solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the solvent cleaning machine. An open-top vapor cleaning machine is a type of batch cleaning machine. A solvent cleaning machine, such as a ferris wheel cleaner, that cleans multiple batch loads simultaneously and is manually loaded is a batch cleaning machine.

Cold cleaning machine means any device or piece of equipment that contains and/or uses liquid solvent, into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. Cleaning machines that contain and use heated, nonboiling solvent to clean the parts are classified as cold cleaning machines.

Open-top vapor cleaning machine means a batch solvent cleaning machine that has its upper surface open to the air and boils solvent to create solvent vapor used to clean and/or dry parts.

Immersion cold cleaning machine means a cold cleaning machine in which the parts are immersed in the solvent when being cleaned.

In-line cleaning machine or *continuous cleaning machine* means a solvent cleaing machine that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned. These units are fully

Continued

make sense to add a narrowed use restriction to SNAP ''acceptable'' or ''acceptable subject to use conditions'' determinations that would permit the use of the solvent in the appropriate application (i.e., precision cleaning, electronics cleaning, or metals cleaning) only if the solvent is used in conjunction with equipment that meets the HSC NESHAP? This restriction might be stated as follows: ''May only be used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that conform to 40 CFR 63.462 or 40 CFR 63.463.'' If an acceptability decision were restricted in this manner, and if EPA were to regulate manual cleaning as discussed in the previous section of the preamble, then the solvent presumably could not be used in (a) manual cleaning in that application, (b) any other cleaning process in that application not subject to the HSC NESHAP, or (c) any cleaning process in that application subject to the HSC NESHAP but not in conformance with the NESHAP.

Another alternative would be to restrict a solvent's use to some subset of the applications mentioned above. For example, there could be conditions prohibiting the solvent's use for any cleaning machines in that application not subject to the HSC NESHAP, or for any cleaning process in that application subject to the HSC NESHAP but not in conformance with the NESHAP. This alternative restriction might be stated as follows: ''If used in cleaning machines, may only be used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that conform to 40 CFR 63.462 or 40 CFR 63.463.'' Or, the restriction could apply to cleaning processes that are subject to the HSC NESHAP and to manual cleaning applications. Under this second alternative, the narrowed use restriction might be stated as follows: ''If used in conjunction with batch cold cleaning machines or batch vapor or in-line cleaning machines that are subject to 40 CFR 63.462 or 40 CFR 63.463, may only be used in conjunction with equipment that meets the requirements set forth in these provisions. Also may not be used in manual cleaning operations.''

EPA is also interested in receiving comments and information on the following:

- What are the potential health and environmental benefits from the SNAP program adding these types of restrictions to future SNAP acceptability determinations?
- Which solvents submitted to the SNAP program in the future, if any, should be subject to the HSC NESHAP restriction? For example, should this restriction be attached to acceptability determinations for any compound for which the eight-hour time-weighted average exposure limit, whether set by the chemical manufacturer, a voluntary industry organization, or a federal or state health or safety agency, is 100 ppm or less? 150 ppm or less? 50 ppm or less?
- Should any solvents that EPA has already listed as ''acceptable'' be subject to this type of restriction, in order to prevent worker exposures or atmospheric emissions?

The Agency hopes that today's action will give the public an opportunity to provide input at an early stage in this decision-making process. If EPA pursues this expansion of the scope of SNAP review, we will do so through notice-and-comment rulemaking.

V. Status of EPA Review of n-Propyl Bromide

EPA is in the process of reviewing n-propyl bromide (nPB) as a potential substitute for CFC–113, methyl chloroform and HCFC–141b in the non-aerosol solvent cleaning sector for general metals, precision, and electronics cleaning applications, as well as in adhesive and coatings applications, and aerosol propellant and solvent applications. On February 18, 1999, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** at 64 FR 8043, which requested comment and information on nPB, particularly with regard to its ozone-depletion potential (ODP) and its toxicity, in order to assist in the development of effective regulatory options.

Through the publication of the ANPRM, EPA summarized and made publicly available the information it had received on nPB so that interested parties could evaluate these data. The ANPRM noted that EPA will supplement the public docket as new information is received, and issue an additional notice of data availability. Today's action serves to provide the public with an update on the information EPA has received to date (which has been added to the public docket), and provides a summary of anticipated next steps in developing regulations under SNAP for nPB.

The discussion below presents this new information for each of the main areas previously identified in the February 1999 ANPRM where significant uncertainties existed or data were incomplete.

Ozone Depletion Potential. Since the publication of the ANPRM, EPA has received new information about ongoing modeling efforts to estimate nPB's ODP. These new efforts involve development and refinement of three-dimensional (3–D) chemical transport models that account for the relatively short-atmospheric lifetime of nPB (11–14 days according to Nelson et al. 1997; Wuebbles et al., 1998; 1999a, and 19–20 days according to Wuebbles et al., 2000) and for the location and timing of emissions. While two-dimensional models can treat longer-lived gases (e.g., CFCs, halons) that are well-mixed in the atmosphere as if they are uniformly emitted at all latitudes and longitudes, they are not designed to adequately account for variations in concentrations and transport of short-lived compounds and their degradation products. As discussed in a March 1999 workshop on short-lived compounds sponsored by EPA and NASA (Wuebbles and Ko, 1999), the ODPs for short-lived compounds ideally would be defined as a function of location and perhaps time of emission. 3–D models can examine questions related to convective transport rates of these short-lived compounds and their degradation products at different latitudes, and the relative importance of transient versus steady-state effects. Using the most recent version of the MOZART2 3–D model and considering the full degradation chemistry of nPB in the atmosphere, Wuebbles et al. 2000 (available from the EPA Air Docket) derived a range of ODP values that are strongly dependent on location of the emissions, especially with respect to latitude. For example, the ODP averaged for all global emissions is estimated to range from 0.033 to 0.040, but the ODP for emissions from the tropics (India, Southeast Asia, and Indonesia) is estimated to be much larger, 0.87 to 0.105. The authors attribute the difference to the strong effect of the deep convective transport in the tropics in rapidly moving gases to the upper troposphere. Assuming that emissions occur only over the contiguous United States, the ODP is estimated to range from 0.016 to 0.019. While many of the previously identified uncertainties with

enclosed except for the conveyor inlet and exit portals. In-line cleaning machines can be either cold or vapor cleaning machines.

Solvent cleaning machine means any device or piece of equipment that uses halogenated HAP solvent liquid or vapor to remove soils from the surfaces of materials. Types of solvent cleaning machines include, but are not limited to, batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines.

Vapor cleaning machine means a batch or in-line solvent cleaning machine that boils liquid solvent generating solvent vapor that is used as a part of the cleaning or drying cycle.

respect to the potential impacts of nPB on stratospheric ozone are addressed in this study, the authors note that considerable uncertainties remain related to the lack of empirical data on reaction rate constants and products for the degradation chemistry associated with nPB. Additional uncertainties also remain that are common to any 3–D modeling of short-lived gases related to the treatment of convective processes, boundary layer processes, surface deposition, and rainout.

The Agency remains interested in receiving from the public any other information pertaining to the atmospheric effects and ozone depletion potential of short-lived atmospheric chemicals (e.g., shorter than three months), and any additional information on the ODP of nPB, specifically. EPA will make any new information accessible to the public as it becomes available by placing it in the docket identified in the Addresses section of this document, and if appropriate, will issue a notice of data availability in the **Federal Register** to insure that the public is aware of any new information.

Toxicity. As with other solvents, occupational exposure to nPB may occur via both inhalation and skin absorption. Potential health effects related to overexposure to nPB (and many other solvents) may include irritation of the eyes, mucous membranes, upper respiratory tract, and skin. At higher exposure levels, central nervous system effects (characterized by headache and dizziness, possibly leading to loss of consciousness) may occur. Animal studies indicate that exposure to nPB at concentrations above 400 parts per million for ''sub-chronic'' durations of 28–90 days is associated with liver toxicity and reproductive system effects (reduced sperm counts and motility). Reproductive system effects have also been observed in both rats and humans exposed to 2-bromopropane (iPB), an isomer of nPB which also has tested positive in some in vitro cancer assays.

As discussed in the February 1999 ANPRM, the reproductive and developmental effects of nPB are especially uncertain, and require additional data before the Agency issues a proposed regulation. In cooperation with EPA, a consortium of nPB manufacturers conducted a study to evaluate the effects of nPB exposures on the developmental and reproductive systems in two generations of rats. This study was recently completed, and we expect that its results will be available for Agency review early in 2001.

EPA is also aware of recent Japanese studies that have shown adverse neurotoxicological and reproductive toxicological effects in rats exposed to nPB levels as low as 200 ppm, which is a lower level for adverse effects than has been previously demonstrated (Ichihara et al., 2000a, b). The Agency intends to review the protocols followed in these studies in order to estimate the significance of the findings.

EPA plans on issuing a proposed nPB regulation as soon as possible once we have had an opportunity to evaluate the results of these recent toxicological studies. In the event that EPA lists uses of nPB in certain applications as acceptable, we expect that the final action will include a recommended exposure limit. In the February 1999 ANPRM, EPA recommended that until exposure levels are set, either on a voluntary basis by a standard-setting organization such as the American Conference of Governmental Industrial Hygienists (ACGIH) or the American Industrial Hygienists Association (AIHA), or on a mandatory basis by OSHA, nPB users should adhere to a preliminary exposure limit of 50–100 ppm over an eight-hour time-weighted average. The nPB manufacturers' current company-set limit at that time was 100 ppm. However, based on the preliminary review of the two-year study discussed above, one manufacturer of nPB has revised its recommended exposure limit to 25 ppm on an 8-hour, time-weighted average basis (see docket A–91–42, item IX-B–61). As indicated by at least one manufacturer's decision and as noted in the February 1999 ANPRM, the results from developmental and reproductive testing may require a lower limit than EPA's preliminary recommendation of 50–100 ppm to be protective.

The U.S. Occupational Safety and Health Administration (OSHA) has submitted nPB and iPB to the National Institute of Environmental Health Sciences' National Toxicology Program (NTP) for further assessment. In its submission, OSHA recommended that NTP consider administering the following tests: Carcinogenicity study in both sexes of rats and mice; a multi-generation reproductive study; developmental studies (inhalation by pregnant animals); a subchronic neuro-toxicity study; a genotoxicity battery; and toxicokinetic/mechanistic studies. These studies would likely take several years to complete. EPA anticipates that once the assessment is finalized, OSHA will work to develop a mandatory exposure limit for nPB use in the workplace. The results of OSHA's review could result in a limit that is lower than EPA's preliminary recommendation of 50–100 ppm.

EPA is presenting and making publicly available the information it has received so that interested parties may evaluate these data for themselves and use it as guidance if they choose to use nPB until a proposal and final rule are in place. EPA remains interested in receiving additional information on human health and toxicological risks associated with exposure to nPB. As EPA receives new information, we will add it to the docket, along with a notice of data availability in the **Federal Register**, as appropriate.

VI. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's

unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this action EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/chron.html. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

VI. Additional Information

Contact the Stratospheric Protection Hotline at (800) 296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at www.epa.gov/ozone/title6/snap/ and from the Stratospheric Protection Hotline, the toll-free telephone number of which is listed above.

VII. References

The following referenced documents are available for inspection and copying at the EPA Docket.

Ichihara, G., et al., ''1-Bromopropane, an Alternative to Ozone Layer Depleting Solvents, Is Dose-Dependently Neurotoxic to Rats in Long-Term Inhalation Exposure,'' Toxicological Sciences 55, 116–123 (2000a), available through the EPA Air Docket and at http://toxsci.oupjournals.org/cgi/content/full/55/1/116.

Ichihara, G., et al., ''Reproductive Toxicity of 1-Bromopropane, a Newly Introduced Alternative to Ozone Layer Depleting Solvents, in Male Rats,'' Toxicological Sciences 54, 416–423 (2000b), available through the EPA Air Docket and at http://toxsci.oupjournals.org/cgi/content/full/54/2/416).

Wuebbles, D.J., Patten, K.O., Johnson, M.T., Kotomarthi, R.; The New Methodology for Ozone Depletion Potentials of Short-Lived Compounds: n-Propyl Bromide as an Example June 26, 2000 Draft.

Web site for Albemarle Corporation, ''Regulatory Status'' and ''Product Data'' for Abzol cleaners, available through the EPA Air Docket and at http://www.albemarle.com/abztopicsfrm.htm.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A: Summary of Acceptable Decisions

End-Use	Substitute	Decision	Comments
REFRIGERATION and AIR CONDITIONING			
industrial process refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, HCFC–22 and R–502.	Acceptable.	

End-Use	Substitute	Decision	Comments
retail food refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–12 and R–502.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–12 and R–502.	Acceptable.	
very low temperature refrigeration, for use as a secondary heat transfer fluid in new equipment for not-in-kind replacements of systems.	Hydrofluoroether 7100 as a substitute for CFC–113, R–13B1, and R–503.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–113, R–13B1, and R–503.	Acceptable.	
non-mechanical heat transfer, for use in retrofit and new equipment.	Hydrofluoroether 7100 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11, CFC–12, CFC–114, CFC–115, and HCFC–22.	Acceptable.	
industrial process refrigeration and air-conditioning (retrofit and new).	FOR12A as a substitute for HCFC–22.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–22.	Acceptable.	
industrial process refrigeration (retrofit and new).	SP34E as a substitute for CFC–12.	Acceptable.	
cold storage warehouses (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
refrigerated transport (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–22.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
retail food refrigeration (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
ice machines (new)	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
vending machines (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
water coolers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	

End-Use	Substitute	Decision	Comments
	SP34E as a substitute for CFC–12.	Acceptable.	
centrifugal chillers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–12.	Acceptable.	
reciprocating chillers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	NU–22 as a substitute for HCFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
household refrigerators and freezers (retrofit and new).	FOR12A as a substitute for CFC–12.	Acceptable.	
	FOR12B as a substitute for CFC–12.	Acceptable.	
	SP34E as a substitute for CFC–12.	Acceptable.	
residential air conditioning and heat pumps (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
residential dehumidifiers (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
motor vehicle air conditioning, buses only (retrofit and new).	NU–22 as a substitute for HCFC–22.	Acceptable.	
motor vehicle air conditioning (retrofit and new).	SP34E as a substitute for CFC–12.	Acceptable	Users must use the unique fittings and label specified by the manufacturer, as required by Appendix D to subpart G of 40 CFR part 82. Use is subject to requirements under § 609 of the Clean Air Act.
FOAMS			
• rigid polyurethane and polyisocyanurate laminated boardstock. • rigid polyurethane appliances. • rigid polyurethane slabstock and other foams. • rigid polyurethane commercial refrigeration and sandwich panels. • polyurethane integral skin foam.	Methyl formate as a substitute for CFCs and HCFCs.	Acceptable.	
NON-AEROSOL SOLVENT CLEANING			
all metals cleaning, precision cleaning, and electronics cleaning applications.	Hydrofluoroether 7100 as a substitute for HCFC–141b and HCFC–22.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for HCFC–141b and HCFC–22.	Acceptable.	
	Heptafluorocyclopentane as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	EPA expects users to adhere to an exposure limit of 123 ppm over an eight-hour time-weighted average, with a ceiling of 500 ppm.
	HFC–365mfc as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	

End-Use	Substitute	Decision	Comments
AEROSOL SOLVENTS AND PROPELLANTS			
aerosol solvents	Hydrofluoroether 7100 as a substitute for CFC–11 and HCFC–141b.	Acceptable.	
	Hydrofluoroether 7200 as a substitute for CFC–11 and HCFC–141b.	Acceptable.	
	HFC–365mfc as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable.	

[FR Doc. 00–32150 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–352]

Waivers, Reductions and Deferrals of Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rule regarding petitions for reduction of regulatory fees. The current rule permits a petition for regulatory fee waiver to be submitted with less than full fee payment, which is contrary to the text and intent of the order establishing the regulatory fee waiver rules. The revised rule requires full fee payment to be submitted with any petition for reduction of fee. The revised rule also provides that petitions for reduction that do not include full fee payment will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

DATES: Effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Carla Conover, Office of General Counsel, (202) 418–7882.

SUPPLEMENTARY INFORMATION: 1. It has come to our attention that our rule on regulatory fee waivers does not conform to the text and intent of our order addressing requests for reductions of fees. On our own motion therefore, we amend and correct our rule on fee waivers. Specifically, in our order adopting rules on regulatory fee waivers, we concluded that the required fee must be submitted with any request for waiver or reduction of regulatory fees. *Implementation of Section 9 of the Communications Act.* 9 FCC Rcd 5333, 5344 through 5345 (1994) (hereinafter *Order*). We excepted only the rare petitions requesting waiver or reduction based on financial hardship and which present compelling cases of financial hardship. We specifically rejected comments arguing that we should not generally require that fees be paid when requests for waiver or reduction of regulatory fees are filed. The language of the rule adopted in the *Order,* however, inadvertently included the phrase ''less the amount of the requested reduction,'' following ''the full fee payment,'' and did not include language regarding dismissing petitions not accompanied by full fee payment. (The rule was originally designated as 47 CFR 1.1165(a)(4), but has since been redesignated 47 CFR 1.1166(d).) Our correction to the rule deletes the phrase ''less the amount of the requested reduction'' and adds the final sentence to conform the language of the rule to the text and intent of paragraphs 33 to 35 of the *Order.* We therefore revise paragraph (d) of 47 CFR 1.1166 accordingly.

2. In the interests of fairness, we will ensure that no party that relied on the unamended language of 47 CFR 1.1166(d) will be prejudiced. The amended rule will apply only to petitions filed after the effective date of the amended rule.

3. Accordingly, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 159, & 303(r), part 1 of the Commission's rules, 47 CFR part 1, is amended as set forth and is effective January 17, 2001.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(4), 309.

2. Section 1.1166 is amended by revising paragraph (d) to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * * *

(d) Petitions for reduction of a fee must be accompanied by the full fee payment and Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835. Petitions for reduction that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

[FR Doc. 00–31946 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 00–405]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order in this proceeding, which modified the Commission's wireless Enhanced 911 (E911) rules to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. The Commission take this actions to respond to these petitions for reconsideration.

DATES: Effective December 18, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Memorandum Opinion and Order (Fifth MO&O) in CC Docket No. 94–102; FCC 00–405, adopted November 9, 2000, and released November 22, 2000. The complete text of this Fifth MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Fifth Memorandum Opinion and Order

1. In this Fifth Memorandum Opinion and Order (Fifth MO&O), the Commission denies two petitions for reconsideration of the Second Memorandum Opinion and Order (see Second MO&O, 64 FR 72951, December 29, 1999) in this proceeding, in which the Commission modified its Enhanced 911 (E911) to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. In January 2000, Rural Cellular Association (RCA) and CorrComm, L.L.C. filed petitions for reconsideration of that decision. In April 2000, RCA filed a peittion for stay of the implementation of the amended cost recovery rule, which became effective on April 27, 2000. Inasmuch as the Commission now denies the petitions for reconsideration of the Second MO&O, the petition for stay is denied as moot.

2. In denying the petitions for reconsideration the Commission affirms that: (1) Adequate notice and opportunity for comment was provided, (2) a complete record supports our conclusion that the rule resulted in a significant impediment to Phase I implementation that was inconsistent with our rules and the statute, and (3) we fully considered the impact of removing the carrier cost recovery requirement on all carriers, including rural carriers.

Final Regulatory Flexibility Analysis

3. The Commission has not prepared an additional Final Regulatory Flexibility Analysis (FRFA) of the possible economic impact on small entities of the Commission's decisions. See generally, the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, because this Fifth MO&O does not promulgate or revise any rules, and the previous FRA analyses in this proceeding remain unchanged.

Authority

4. This action is taken pursuant to sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, and 332.

Ordering Clauses

5. The Petitions for Reconsideration filed by Corr Wireless Communications, L.L.C. (formerly CorrComm, L.L.C.) and Rural Cellular Association are denied. The Petition for Stay filed by Rural Cellular Association is denied as moot.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32134 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 00–428]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, the Commission adopts the Joint Board's recommendations that Long Term Support (LTS) be maintained under the current rules until the Commission considers appropriate reforms for the LTS program in connection with the pending proceedings for high-cost reform for rural carriers and/or interstate access charge reform for rate-of-return carriers and the balance of interim hold-harmless support, excluding LTS, be phased down through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter, except that interim hold-harmless support transferred to a rural carrier when it acquires telephone exchanges from a non-rural carrier shall not be phased down following the transfer.

DATE: Effective December 18, 2000.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Thirteenth Report and Order in CC Docket No. 96–45 released on December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Thirteenth Report and Order, we adopt the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless provision of the forward-looking high-cost universal service support mechanism for non-rural carriers. Specifically, we adopt measures to phase down interim hold-harmless support, excluding Long-Term Support (LTS), through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. For the reasons discussed, we believe that these measures will ensure a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption. We conclude that several issues, such as appropriate

reforms for the LTS program, should be addressed in the context of our pending proceedings for rural high-cost reform and/or interstate access charge reform for rate-of-return carriers.

II. Phase Down of Interim Hold-Harmless Support

A. Long-Term Support

2. We adopt the Joint Board's recommendation regarding LTS. The forward-looking mechanism adopted in the *Ninth Report and Order,* 64 FR 67416, December 1, 1999, does not replace LTS for non-rural carriers, contrary to the Commission's originally anticipated outcome. Therefore, we agree with the Joint Board that LTS for non-rural carriers should be preserved until we have considered further reform of the LTS program. In addition, maintaining LTS for non-rural carriers is consistent with our objective to maintain the current support structure, as modified, for rural LTS recipients pending rural high-cost reform. Because LTS is geared primarily to the needs of small, rural carriers, we find that this determination should take place in the context of our related proceedings to reform the high-cost support mechanism for rural carriers and the interstate access charge system for rate-of-return carriers. We will examine these matters in the near future.

B. High-Cost Loop Support for Non-Rural Carriers Under Part 36 of the Commission's Rules

3. We adopt the Joint Board's recommendation that interim hold-harmless support, excluding LTS, be phased down beginning January 1, 2001, through annual $1.00 reductions in each carrier's average monthly, per-line support until this support is eliminated. This approach will promptly phase out interim hold-harmless support for the majority of carriers currently receiving less than $1.00 per-line/per-month, without reducing any carrier's average monthly, per-line support by more than $1.00 per year. Thus, there will be no significant, sudden reductions in per-line support to an individual study area. We agree with the Joint Board that this approach is a reasonable means of ensuring a prompt, equitable phase-down of interim hold-harmless support without causing undue rate disruption, consistent with the objectives we announced in the *Ninth Report and Order.*

4. We also agree with the Joint Board that the phase-down schedule should be reexamined in conjunction with our review of the forward-looking mechanism, which is to be completed by January 1, 2003. At that time, Puerto Rico Telephone Company is likely to be the only carrier still receiving interim hold-harmless support, and more information will be available on the impact of the phase-down in Puerto Rico.

a. Mechanics of Phase-Down

5. To ensure that the phase-down conforms with the quarterly schedule on which interim hold-harmless support is calculated, the Joint Board recommended that the applicable annual reductions be subtracted from the interim hold-harmless support that a carrier otherwise would be eligible to receive on an ongoing, quarterly basis. We adopt this recommendation.

6. We also conclude that the targeting provisions of the *Ninth Report and Order* should govern the distribution of phased-down support. Although non-rural carriers receive interim hold-harmless support based on embedded costs averaged over their entire study areas, the support is targeted for competitive purposes to their highest-cost exchanges based on forward-looking economic costs. The Joint Board did not address the issue of whether phased-down support should be targeted to individual exchanges, except in connection with transferred exchanges. We find, however, that targeting phased-down interim hold-harmless support to a carrier's highest-cost exchanges is consistent both with the Joint Board's recommendations and with the *Ninth Report and Order.*

b. Calculation of High-Cost Loop Support for Rural Carriers

7. We adopt the Joint Board's recommendation that the ''interim cap'' on high-cost loop support for rural carriers be calculated as if phased-down interim hold-harmless support were being distributed to non-rural carriers, pending reform of the high-cost support mechanism for rural carriers. Under the current rules, universal service support for all carriers under Part 36 is restricted by a cap that limits the total increase in support each year to the annual growth in nationwide loops. To avoid smaller annual increases in the support available to rural carriers as a result of the shift to forward-looking support for non-rural carriers, we directed in the *Ninth Report and Order* that the cap be calculated as if all carriers continue to participate in the preexisting Part 36 high-cost support mechanism. Subtracting phased-down support amounts from calculation of the cap likewise could result in smaller annual cap increases, because the prior year support level used to calculate the cap includes the high-cost loop support for non-rural carriers under Part 36 that will be phased down as a result of the approach we adopt herein. Accordingly, we agree with the Joint Board that an interim ''placeholder'' measure is warranted to avoid significant and immediate changes in high-cost support for rural carriers as a result of the phase-down. In accordance with the Joint Board's recommendations, we also conclude that phased-down support for non-rural carriers (support calculated as a ''placeholder'') should not be collected or distributed to other carriers. We note that we expect this placeholder to remain in effect for a limited time, as we are committed to moving forward expeditiously on high-cost reform for rural carriers.

c. Transferred Interim Hold-Harmless Support

8. We are mindful of the Joint Board's concerns regarding the operation of § 54.305 of the Commission's rules. As the Joint Board recognized, however, the rule serves the important purpose of preventing carriers receiving support based on the size of their study areas and embedded costs from ''placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]'' Section 54.305 was adopted as a temporary measure to be utilized during our transition to universal service support mechanisms that provide support to all carriers based on the forward-looking economic costs of operating a given exchange. The Joint Board is currently considering reform of the rural high-cost support mechanism, including the operation of § 54.305 for rural carriers. We believe that the rural high-cost reform proceeding is the most appropriate context in which to reexamine the operation of § 54.305 with regard to transfers involving rural carriers.

9. We therefore adopt the Joint Board's recommendation not to phase down interim hold-harmless support for eligible exchanges transferred to rural carriers until we reexamine § 54.305 or until rural high-cost reform is complete.

10. We also adopt the Joint Board's recommendation that interim hold-harmless support for exchanges transferred to non-rural carriers be phased down over the same time period as the seller's support would have been phased down. We agree with the Joint Board that this approach will ensure a prompt and equitable phase-down of transferred interim hold-harmless support, and discourage carriers from transferring exchanges to delay or avoid the phase-down of interim hold-

harmless support. In addition, we adopt the recommendation that targeted support for exchanges transferred to non-rural carriers be phased down by an equal percentage for each year of the phase-down period, on an exchange-by-exchange basis. This approach will be administratively simple and predictable for acquiring non-rural carriers.

III. Procedural Matters

A. Regulatory Flexibility Act Certifications—Final and Initial

11. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of proposed policies and rules, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in Standard Industrial Classification Code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

12. We conclude that a FRFA is not required here. The foregoing Thirteenth Report and Order adopts a final rule. The rules adopted affect the amount of high-cost support provided to non-rural carriers. Non-rural carriers generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. Thus, the final rules adopted here do not affect a substantial number of small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the Thirteenth Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Thirteenth Report and Order and of this certification to the Chief Counsel for Advocacy of the SBA. In addition, this certification will be published in the **Federal Register**. The Commission will send a copy of this Thirteenth Report and Order, including a copy of this certification, in a report to Congress pursuant to the SBREFA.

B. Effective Date of Final Rules

13. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. In this Thirteenth Report and Order we conclude that the phase-down of interim hold-harmless support, excluding LTS, will be implemented beginning January 1, 2001. Thus, the amendments must become effective by January 1, 2001. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2001 implementation date. This implementation date is important because January 1, 2001 is the beginning of a new funding year, and interim hold-harmless support is a transitional funding mechanism that increases the size of the federal high-cost fund and should be phased down as rapidly as possible without causing undue disruption to consumer rates in high-cost areas. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

C. Paperwork Reduction Act

14. The instant Report and Order contains no information collections.

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, this Thirteenth Report and Order is adopted.

22. Part 36 of the Commission's rules is amended as set forth, effective December 18, 2000.

23. Part 54 of the Commission's rules is amended as set forth, effective December 18, 2000.

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Thirteenth Report and Order, including the Regulatory Flexibility Act Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36 and 54 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F—Universal Service Fund

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. In § 36.601, add the following sentence at the end of paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) * * *

Support amounts calculated pursuant to this subpart F but not received due to the phase down of interim hold-harmless support or the receipt of forward-looking support pursuant to § 54.311 of this chapter shall not be redistributed to other carriers.

* * * * *

PART 54—UNIVERSAL SERVICE

Subpart D—Universal Service Support for High Cost Areas

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

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

4. In § 54.311, paragraph (d) is added to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

* * * * *

(d) *Phase down of interim hold-harmless support.* Beginning January 1, 2001, the interim hold-harmless support for which a non-rural incumbent local exchange carrier qualifies under paragraph (a) of this section, excluding Long Term Support, shall be phased down through annual $1.00 reductions

in average monthly, per-line support. Applicable annual reductions shall be subtracted from the total amount of interim hold-harmless support that a non-rural incumbent local exchange carrier otherwise would be eligible to receive on an ongoing, quarterly basis. The provisions of paragraph (b) of this section shall apply to the total amount of phased-down interim hold-harmless support provided to each non-rural incumbent local exchange carrier.

(1) Interim hold-harmless support for a wire center transferred to a carrier that does not meet the definition of rural telephone company in § 51.5 of this chapter shall be phased down following the transfer over the same time period as the seller's support would have been phased down, by an equal percentage for each year of the phase-down period.

(2) Interim hold-harmless support for a wire center transferred to a carrier that meets the definition of rural telephone company in § 51.5 of this chapter shall remain frozen at the per-line support level as of the sale date.

[FR Doc. 00–32071 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 121200H]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for North Carolina

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of North Carolina has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in North Carolina for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in North Carolina.

DATES: Effective 0001 hours, December 17, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, or 3,049,560 lb (1,383,257 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of North Carolina has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 17, 2000, further landings of summer flounder in North Carolina by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 17, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 12, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–32136 Filed 12–13–00; 3:26 pm]

BILLING CODE: 3510–22 –S

Proposed Rules

Federal Register
Vol. 65, No. 243
Monday, December 18, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. I

Grain Inspection, Packers and Stockyards Administration

7 CFR Ch. VIII

[Docket Number FGIS–2000–001a]

RIN 0580–AA73

Request for Public Comments on How USDA Can Best Facilitate the Marketing of Grains, Oilseeds, Fruits, Vegetables, and Nuts in Today's Evolving Marketplace

AGENCY: Agricultural Marketing Service Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The United States Department of Agriculture (USDA) published a document in the **Federal Register** of November 30, 2000, concerning request for comments on How USDA Can Best Facilitate the Marketing of Grains, Oilseeds, Fruits, Vegetables, and Nuts in Today's Evolving Marketplace. The document omitted e-mail as a means of filing public comments.

FOR FURTHER INFORMATION CONTACT: Marianne Plaus, 202–690–3460.

Correction

In the **Federal Register** of November 30, 2000, in FR Doc. 00–30140, on page 71272, in the second column, correct the first paragraph of the ''Addresses'' caption to read:

ADDRESSES: Interested persons are invited to submit written comments on this notice to Richard Hardy, GIPSA, USDA, 1400 Independence Avenue, SW., Room 0757–S, Washington, DC 20250–3650. Comments may also be sent by fax to (202) 720–2459, filed via the Internet through the GIPSA homepage at www.usda.gov/gipsa, or filed via e-mail at anpr@gipsadc.usda.gov.

Dated: December 12, 2000

David R. Shipman,

Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

Michael D. Fernandez,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–32158 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–EN–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 907 and 908

[No. 2000–42]

RIN 3069–AB–03

Rules of Practice and Procedure

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations to implement the provisions of Title VI of the Gramm-Leach-Bliley Act, Public Law 106–102 (1999) and to establish rules of practice and procedure governing hearings on the record in certain administrative enforcement actions. The proposed rule is intended to provide Finance Board personnel, the Federal Home Loan Banks (Banks), the Office of Finance (OF) and the directors and executive officers of the Banks and OF, as well as any other interested parties, with sufficient notice and guidance to fully utilize the procedures.

The Finance Board is also proposing to make certain conforming amendments to its existing rules.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before January 17, 2001.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Federal Home Loan Bank Act

The twelve Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1421–1449 (Act). The Banks are a ''government sponsored enterprise'' (GSE), i.e., a federally chartered but privately owned institution created by Congress to serve a public purpose. The purpose of the Banks is to support the financing of housing and community development lending. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j)(10). The Banks are cooperatives, meaning that only a member of a Bank may own the Bank's capital stock and share in its profits. An institution that is eligible (typically, an insured depository institution) may become a member of a Bank if it satisfies certain statutory criteria and purchases a specified amount of the Bank's capital stock. 12 U.S.C. 1424, 1426. Only members and certain eligible housing associates (such as state housing finance agencies) may borrow from or use other products and services offered by the Banks. 12 U.S.C. 1426, 1430(a), 1430b.

The Banks, together with the OF, comprise the Federal Home Loan Bank System (Bank System), which operates under the supervision of the Finance Board, an independent agency in the executive branch of the Federal government.[1] Under the Act, the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Finance Board is required to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B).

Section 2B of the Act sets forth the powers and duties of the Finance Board. 12 U.S.C. 1422b. In general, the Finance Board is empowered to supervise the Banks and to promulgate and enforce

[1] The Finance Board was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, 103 Stat. 412 (FIRREA).

such regulations and orders as are necessary to carry out the provisions of the Act. 12 U.S.C. 1422b(a)(1). The Finance Board also is authorized to suspend or remove for cause a director, officer, employee or agent of any Bank or OF. The Act requires that the Finance Board communicate in writing to the subject individual and the Bank or OF the cause of any such suspension or removal. 12 U.S.C. 1422b(a)(2). With the enactment of the Gramm-Leach-Bliley Act in 1999, the Finance Board's enforcement powers were significantly expanded.

B. The Gramm-Leach-Bliley Act Amendments

On November 12, 1999, the Gramm-Leach-Bliley Act, Public Law No. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act), was enacted. Title VI of the GLB Act, known as the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), substantially amended the Act. In particular, section 606 of the Modernization Act amended section 2B of the Act, 12 U.S.C. 1422b(a)(5), to confer on the Finance Board certain administrative enforcement powers with respect to the Banks and the Office of Finance, and their executive officers and directors, which are substantially the same as those granted to the Office of Federal Housing Enterprise Oversight (OFHEO) with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the housing finance enterprises), or the directors or executive officers of the housing finance enterprises, by the enforcement provisions in Subtitle C of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) in sections 1371 through 1379B (codified at 12 U.S.C. 4631–4641), and those granted to the appropriate Federal banking agency with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, *as amended.* (codified at 12 U.S.C. 1818(b)(6) and (7)).

Specifically, section 606 of the Modernization Act enumerates the grounds pursuant to which the Finance Board may issue a notice of charges; incorporates by reference the authority and procedures provided for in sections 1371(c) and (f) of the Safety and Soundness Act (12 U.S.C. 4631(c) and (f)) with regard to the issuance of a notice of charges and cease and desist orders (C&D orders); confers on the Finance Board the same authority to issue corrective orders as the appropriate Federal banking agencies have with respect to insured depository institutions as set forth in 12 U.S.C. 1818(b)(6) and (7); and provides that the Finance Board has all other powers to enforce the Act that OFHEO has under Subtitle C of Title XIII of the Safety and Soundness Act to enforce its statutes, including the authority to issue a temporary C&D order and to assess a civil money penalty (CMP) (12 U.S.C. 4632 and 4636, respectively). *See* 12 U.S.C. 1422b(a)(5). The Modernization Act also incorporates OFHEO's statutory authority and procedures for hearings, judicial review of final orders, the issuance of subpoenas and subpoenas *duces tecum* to obtain testimony and documents, and the enforcement of final orders (12 U.S.C. 4633–4641). *See id.* These expanded powers in no way restrict the ability of the Finance Board under its existing authority to supervise the Banks or to promulgate and enforce orders or directives under section 2B(a)(1) or any other provision of the Act.

II. Synopsis of the Proposed Rule

The Act requires the Finance Board to adopt rules of practice and procedure consistent with the Administrative Procedure Act, 5 U.S.C. 500–559 (APA), for all matters to be determined by the Finance Board on the record after an opportunity for a hearing, including cease-and-desist orders and civil money penalty assessments.[2] Thus, the rules of practice and procedure set forth in the proposed rule are intended to supplement the APA requirements for adjudicatory hearings required by the statute to be held on the record.[3]

Subpart A of the proposed rule defines terms appearing in this part, prescribes the scope of the regulation, and relates the general rules of construction. Subpart B of the proposed rule recites the scope of the Finance Board's authority with respect to certain enforcement proceedings, including cease and desist orders, temporary cease and desist orders and civil money penalties, suspension and removal authority, judicial review of final orders, public disclosure of final orders, and the limitation on any implied private right of action. The proposed rule also provides for the service of a notice of charges on a former executive officer or director of a Bank or OF, within two years of their separation from service.

Subpart C of the proposed rule provides the general rules that govern the process and recites the authority of the Finance Board, Board of Directors and the presiding officer. The presiding officer is defined to mean an Administrative Law Judge (ALJ), or other neutral, qualified individual who is appointed by the Finance Board under applicable law (presiding officer), to preside over the hearing from the time of the appointment until he or she files the record, including a recommended decision and order, for a final decision.

The Board of Directors may intervene in any matter to perform, direct the performance of, or waive the performance of any authorized action of the presiding officer. The presiding officer is authorized to: Change the hearing date, time or place; issue or modify subpoenas or subpoenas *duces tecum;* issue protective orders; administer oaths and affirmations; regulate the course of the hearing and hold conferences to address issues arising in the hearing; and rule on non-dispositive motions.

All hearings are open to the public, unless the Finance Board determines that an open hearing would be contrary to the public interest. Consistent with a Finance Board determination to hold an open hearing, the presiding officer may limit public and media access to any public hearing. Any party may file a motion with the presiding officer for a closed hearing in accordance with the applicable limitations. Additionally, the Finance Board may file any document or portion of a document under seal and the presiding officer is required to take all appropriate steps to preserve the confidentiality of such document(s) or parts thereof.

The proposed rule provides that every filing or submission of record shall be signed by at least one representative of record to certify that the document has been read and that to the best of the representative's knowledge it is supported in fact and is not made for any improper purpose. *Ex parte* communications are prohibited. Any party or representative who makes or elicits an *ex parte* communication may be subject to appropriate sanctions. The Finance Board anticipates that in the future, under applicable law, the agency will have the necessary technological ability to enable the parties to submit documents by electronic media, and may specify the conditions for such electronic transmission. Until further notice, for purposes of this regulation,

[2] *See* 12 U.S.C. 1422b(a)(5), which incorporates the OFHEO requirement from the Safety and Soundness Act of 1992 (12 U.S.C. 4633(a)(3)).

[3] The procedures set forth in part 908 are distinct from those described in part 907, and are not contingent upon the issuance of an examination finding, any order or directive concerning safety and soundness or compliance, or any other order of the Finance Board under section 2B(a)(1) of the Act.

all papers filed by the parties shall be filed in accordance with the requirements set out in proposed § 908.25(c).

Any respondent may submit a settlement proposal to the Finance Board in accordance with proposed § 908.30. Submission of a settlement offer does not provide a basis for delaying a proceeding, and no settlement offer is admissible in evidence in the adjudicative proceeding or any court. Importantly, nothing in the rule prohibits or restricts the authority of the Finance Board to conduct any examination or inspection of any Bank, or to conduct or to continue any form of investigation authorized by law.

Under subpart D, the Finance Board commences the hearing process by issuing and serving a notice of charges on a respondent. During the course of a hearing, the presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any pre-hearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Board of Directors has the authority to dismiss the proceeding or to make a final determination on the merits of the proceeding following a hearing on the record or a negotiated disposition.

Subpart E of the proposed rule governs hearings and post-hearing proceedings. Section 908.60 of the proposed rule provides that hearings shall be conducted in accordance with the APA, and any other applicable law. The parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Board of Directors for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all pre-hearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Board of Directors shall issue a final ruling within 90 days of the date the presiding officer serves notice on the parties that the record is complete and the case has been submitted to the Board of Directors for final decision, or at such time as is practicable within the discretion of the Board of Directors.

Subpart F, ''Rules of Practice Before the Finance Board,'' governs the parties and their representatives appearing before the Finance Board under this rule and provides for the imposition of disciplinary sanctions—censure, suspension or disbarment—by the presiding officer or the Board of Directors against parties or their representatives. This subpart covers parties and individuals that appear before the Finance Board in a representational capacity. The presiding officer may decide what notice and responses are appropriate where sanctions are at issue for conduct arising in an adjudicatory proceeding or hearing. The proposed rule prescribes when sanctions may be imposed, and what those sanctions may be. Covered representation may include, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart. The Finance Board may also apply these qualification and disciplinary rules to parties or representatives in an administrative proceeding under part 907 of the Finance Board's rules and regulations governing requests for regulatory interpretations, approvals, waivers, case-by-case determinations or review of disputed supervisory determinations, which are not required by statute to be resolved following a hearing on the record. *See* 12 CFR part 907.

III. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications, that is, regulations or actions 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 between Federal and State Government. The Finance Board has determined that this proposed rule has no federalism implications that warrant consultation with the states or the preparation of a federalism summary impact statement in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

In order to make the regulatory process more efficient, Executive Order 12866 requires the centralized review of regulatory action. The Finance Board has determined that this proposed rule is not a significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB), and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This proposed rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires for any rule that includes a Federal mandate that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million, that an agency prepare an assessment statement of the anticipated costs and benefits of the Federal mandate. *See* 2 U.S.C. 1532(a). The proposed rule does not include such a Federal mandate, and, therefore, it does not warrant the preparation of such an assessment statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, when promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act seeks to minimize the paperwork burden for individuals, small businesses, and other entities resulting from the collection of information by or for the Federal government. *See* 44 U.S.C. 3501 *et seq.* This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995.

44 U.S.C. 3502(3). Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 907

Administrative practice and procedures, Federal Home Loan Banks.

12 CFR Part 908

Administrative practice and procedures, Penalties.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR parts 907 and 908 as follows:

PART 907—PROCEDURES

1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

2. In § 907.15, add paragraph (j) to read as follows:

§ 907.15 General provisions.

* * * * *

(j) *Rules of practice.* In connection with any matter initiated or pending pursuant to subpart C of this part, petitioners, requestors or intervenors shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply to administrative matters under this part.

3. Add a new part 908 to read as follows:

PART 908—RULES OF PRACTICE AND PROCEDURE IN HEARINGS ON THE RECORD

Subpart A—Introduction

Sec.
908.1 Definitions.
908.2 Scope.
908.3 Rules of construction.

Subpart B—Scope and Authority—Enforcement and Removal Proceedings

908.4 Cease and desist orders.
908.5 Temporary cease and desist orders.
908.6 Civil money penalties.
908.7 Suspension and removal.
908.8 Subpoenas.
908.9 Hearings on the record.
908.10 Judicial review.
908.11 Jurisdiction, enforcement of orders and notice.
908.12 Notice after separation.
908.13 Public disclosure of final orders.
908.14 No implied private right of action.
908.15—908.19 [Reserved]

Subpart C—General Rules

908.20 Authority of the Board of Directors.
908.21 Authority of the presiding officer.
908.22 Public hearings.
908.23 Good faith certification.
908.24 Ex parte communications.
908.25 Filing of papers.
908.26 Service of papers.
908.27 Computing time.
908.28 Change of time limits.
908.29 Witness fees and expenses.
908.30 Settlement or other dispute resolution.
908.31 Right to supervise the Banks.
908.32 Collateral attacks on adjudicatory proceeding.
908.33—908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

908.40 Commencement of proceeding and contents of notice of charges.
908.41 Answer.
908.42 Amended pleadings.
908.43 Failure to appear.
908.44 Consolidation and severance of actions.
908.45 Motions.
908.46 Discovery.
908.47 Request for document discovery from parties.
908.48 Document subpoenas to nonparties.
908.49 Deposition of witness unavailable for hearing.
908.50 Interlocutory review.
908.51 Summary disposition.
908.52 Partial summary disposition.
908.53 Scheduling and prehearing conferences.
908.54 Prehearing submissions.
908.55 Hearing subpoenas.
908.56–908.59 [Reserved]

Subpart E—Hearing and Post-Hearing Proceedings

908.60 Conduct of hearings.
908.61 Evidence.
908.62 Post hearing filings.
908.63 Recommended decision and filing of record.
908.64 Exceptions to recommended decision.
908.65 Review by Board of Directors.
908.66 Exhaustion of administrative remedies.
908.67 Stay of order pending judicial review.
908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

908.70 Scope.
908.71 Practice before the Finance Board.
908.72 Appearance and practice in proceedings before the Finance Board.
908.73 Conflicts of interest.
908.74 Sanctions.
908.75 Censure, suspension, disbarment and reinstatement.

Authority: 12 U.S.C. 1422b(a)(5), 4631(c) and (f), and 4632–4641. Section 908.4 is also authorized by 12 U.S.C. 1818(b)(6) and (7). Section 908.7 is also authorized by 12 U.S.C 1422b(a)(2).

Subpart A—Introduction

§ 908.1 Definitions.

For purposes of this part—

(a) *Adjudicatory proceeding or hearing* means a proceeding conducted pursuant to this part and leading to the formulation of a final order other than a regulation;

(b) *Decisional employee* means any employee of the Finance Board or any member of the presiding officer's staff who has not engaged in an investigative or prosecutorial role in an adjudicatory proceeding or hearing and who may assist the Board of Directors or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this part.

(c) *OF* means the Office of Finance as defined in § 985.1 of this chapter.

(d) *Notice of charges* means a written order so titled, which is issued by the Finance Board to a respondent, and that describes the alleged violations with sufficient specificity to put the respondent on notice of the nature and scope of the charges being brought against the respondent pursuant to this part.

(e) *Party* means any person named in any notice issued by the Finance Board under this part.

(f) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, Bank, the OF, or other entity or organization.

(g) *Presiding officer* means an administrative law judge or other qualified, neutral individual who is appointed by the Finance Board under applicable law, and, pursuant to Title 5 of the United States Code, may conduct a hearing or adjudicatory proceeding under this part.

(h) *Representative of record* means an individual who is authorized to represent a person or who is representing himself at an adjudicatory proceeding or hearing conducted under this part and who has filed a notice of appearance in accordance with § 908.72.

(i) *Respondent* means any person named in a notice of charges issued by the Finance Board.

(j) *Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501–4641) (Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550).

(k) *Violation* includes any act or omission by a person, undertaken alone or with one or more others, that causes directly or indirectly, counsels, participates in, or otherwise furthers, aids or abets a violation of the Act or any other applicable law, regulation or policy.

§ 908.2 Scope.

This subpart prescribes rules of practice and procedure applicable to an adjudicatory proceeding or hearing with regard to:

(a) Cease and desist proceedings under section 2B(a)(5) of the Act; or

(b) Civil money penalty assessment proceedings against a Bank or OF, or any executive officer or director of any Bank or OF, under section 2B(a)(5) of the Act.

§ 908.3 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

Subpart B—Scope and Authority—Enforcement and Removal Proceedings

§ 908.4 Cease and desist orders.

(a) *General rule.* The Finance Board may issue and serve a notice of charges upon a Bank, OF, or any executive officer or director of a Bank or OF, if in the determination of the Finance Board, the Bank, OF, or any executive officer or director of a Bank or OF, is engaging or has engaged in, or, if the Finance Board has reasonable cause to believe that the Bank, OF, or the executive officer or director of a Bank or OF, is about to engage in:

(1) An unsafe or unsound practice in conducting the business of the Bank or OF;

(2) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or

(3) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank or OF, or any written agreement entered into by the Bank or OF with the Finance Board.

(b) *Actions to limit activities and remedial authority.* (1) *Remedial actions.* The authority of the Finance Board to issue and serve a notice of charges under this part includes the authority to require a Bank or OF or any executive officer or director of a Bank or OF to—

(i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) Such Bank or party was unjustly enriched in connection with the violation, conduct or practice described in the notice of charges under paragraph (c) of this section; or

(B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;

(ii) Restrict the growth of the Bank;

(iii) Dispose of any loan or asset involved;

(iv) Rescind any agreement or contract;

(v) Employ qualified officers or employees (who may be subject to approval by the Finance Board at the direction of the Finance Board); and

(vi) Take such other action as the Finance Board determines to be appropriate.

(2) *Authority to limit activities.* The authority to issue a notice of charges under this section includes the authority to place limitations on the activities or functions of any Bank or OF, or any executive officer or director of a Bank or OF.

(c) *Procedure.* (1) *Statements in notice of charges.* A notice of charges issued pursuant to paragraph (a) of this section shall contain a statement of the facts constituting the alleged conduct or violation and shall fix a time and place at which a hearing on the record will be held to determine whether an order to cease and desist from such conduct or violation should issue.

(2) *Issuance of order.* If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established, or, if a Bank, OF or an executive officer or director of a Bank or OF, is deemed to have consented to the relief sought in the notice of charges pursuant to § 908.43 (or otherwise consents), the Board of Directors may issue and serve upon the Bank, OF, or an executive officer or director of the Bank or OF, an order requiring such party to cease and desist from any such conduct or violation, to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation, or to comply with such limitations on activities or functions as may be prescribed therein, in accordance with paragraph (a) in this section.

(3) *Effective date of order.* An order issued under paragraph (c)(2) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the subject Bank, OF, or executive officer or director of a Bank or OF, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds for issuance and scope.* (1) Whenever the Finance Board determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a Bank, the OF, or an executive officer or director of a Bank or the OF, under this part, or the continuation thereof, is likely to cause insolvency; to cause a significant depletion of the total capital of a Bank; to cause irreparable harm to a Bank or OF; or to make the books and records of a Bank or OF to be so incomplete or inaccurate such that the Finance Board would be unable, through the normal supervisory process, to determine the true financial condition of the Bank or OF or the purpose of any transaction or transactions that may have a material effect on the financial condition of a Bank or OF, the Finance Board may issue a temporary order requiring a Bank, the OF, or an executive officer or director of a Bank or the OF, to immediately cease and desist from any such conduct or violation, or such threatened conduct or violation, and to take immediate affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings.

(2) Additionally, the Finance Board may issue a temporary order requiring:

(i) The cessation of any activity or practice that caused or contributed, whether in whole or in part, to the incomplete or inaccurate state of the books or records of a Bank or the OF; or

(ii) Affirmative action to restore the books or records to a complete and accurate state.

(3) The Finance Board may issue a temporary cease and desist order under § 908.5 prior to the initiation or completion of a proceeding conducted pursuant to § 908.4.

(b) *Effective date and effective period.* (1) *Effective date.* Any temporary order issued pursuant to paragraph (a) of this section shall become effective upon service upon the Bank, OF, or executive officer or director of a Bank or the OF.

(2) *Effective period.* Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (c) of this section, shall remain in effect and enforceable:

(i) Pending the completion of a hearing pursuant to § 908.9 on the

notice of charges issued under § 908.4, and:

(A) The temporary order is superceded by a cease and desist order issued by the Board of Directors under section § 908.4; or

(B) The Board of Directors dismisses or otherwise finally resolves the charges specified in the notice of charges; or

(ii) Until the date the Finance Board determines, by examination or otherwise, that the books and records of the Bank or the OF are accurate and reflect the true financial condition of the Bank or the OF, and the Board of Directors issues a written determination that terminates the temporary order.

(c) *Judicial review.* A Bank, the OF, or any executive officer or director of a Bank or the OF, that has been served with a temporary order pursuant to this subsection may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges served upon the Bank or the OF, or an executive officer or director of a Bank or the OF, under §§ 908.4 and 908.9. In accordance with § 908.9, the district court shall have jurisdiction only to issue such injunction.

(d) *Enforcement of temporary order.* Pursuant to § 908.10, in the case of a violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order. If the district court finds any such violation, threatened violation, or failure to obey, the district court shall issue such injunction.

§ 908.6 Civil money penalties.

(a) *Violations or conduct subject to penalty.* The Finance Board may assess a civil money penalty on any Bank, OF, or any executive officer or director of a Bank or the OF, that:

(1) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(2) Violates any final or temporary order issued by the Finance Board pursuant to the Act;

(3) Violates any written agreement between a Bank, or an executive officer or director of a Bank and the Finance Board, or the terms of any condition imposed in writing by the Finance Board in connection with the grant or approval of an application or request by a Bank; or

(4) Engages in any conduct that causes a loss, or that the Finance Board has reasonable cause to believe may cause a loss to a Bank, or any conduct that constitutes an unsafe and unsound practice or a breach of fiduciary duty.

(b) *Amount of penalty.* (1) The amount of a civil money penalty the Finance Board may assess under paragraph (a) of this section, except as otherwise provided, shall not exceed $5,000.00 for each day that such violation or conduct continues;

(2) The Finance Board may assess a civil money penalty on an executive officer or director of a Bank or OF in an amount not to exceed $10,000.00, or on a Bank or the OF in an amount not to exceed $25,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct is part of a pattern of misconduct, or involved or continues to involve recklessness and caused or would be likely to cause a material loss to a Bank or, with respect to OF, adverse financial or market conditions; or

(3) The Finance Board may assess a civil money penalty on an executive officer or director of a Bank or OF in an amount not to exceed $100,000.00, or on a Bank or OF in an amount not to exceed $1,000,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to a Bank or the OF.

(c) *Factors in determining the amount of the penalty.* In determining the amount of the civil money penalty to be assessed under this section, the Finance Board shall consider such factors as the gravity of the violation, any history of prior violations, the good faith of the officer or director of a Bank or OF, the effect of the penalty on promoting or protecting the safety and soundness of a Bank or the Bank System, any injury to members of the subject Bank or to the public at large, any benefits received, and the potential for the deterrence of future violations.

(d) *Order shall be made on the record after hearing.* An order to assess a civil money penalty on a Bank or OF, or an executive officer or director of a Bank or OF, shall be issued in writing and made on the record only after the subject Bank or OF, or executive officer or director of a Bank or OF, has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9.

(e) *Limitation on judicial review.* An order of the Board of Directors assessing a civil money penalty under this subsection shall not be subject to judicial review except as otherwise provided in § 908.10.

(f) *Judicial enforcement of an order imposing a penalty.* If a Bank, OF, or an executive officer or director of a Bank or OF, fails to comply with an order of the Board of Directors assessing a civil money penalty, the Finance Board may seek to enforce the order as follows:

(1) After the order is final and no longer subject to judicial review under § 908.10, the Finance Board may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against a Bank, OF, or the executive officer or director of a Bank or OF;

(2) The Finance Board may, in addition, seek such other relief as may be available from the District Court;

(3) The monetary judgment may, in the discretion of the District Court, include any attorneys fees and other expenses incurred by the Finance Board in connection with the action; and

(4) The validity and appropriateness of the Board of Directors' order assessing a civil money penalty shall not be subject to review of the United States District Court for the District of Columbia.

(g) *Board of Directors' authority to review.* The Board of Directors may:

(1) Review any determination or order to assess a civil money penalty or any interlocutory ruling arising from a hearing on the record, or

(2) Settle, modify, or remit in whole or in part, any civil money penalty, which may be or may have been assessed under this section.

(h) *Availability of other remedies.* Any civil money penalty assessed under this section shall be in addition to any other available civil remedy and may be assessed whether or not the Finance Board imposes other administrative sanctions pursuant to this part.

(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any individual for any penalty that may be assessed against such individual under this part.

(j) *Applicability.* Any penalty under this part may be assessed for conduct occurring or discovered after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104–134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the

Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act.

§ 908.7 Suspension and removal.

(a) *Authority.* The Finance Board may suspend or remove for cause any director, officer, employee, or agent of any Bank or the OF.

(b) *Issuance of order.* The cause of such suspension or removal shall be communicated in writing to such person(s) and the board of directors of the Bank or the OF, as appropriate.

(c) *Cause.* Cause for suspension or removal may, in the discretion of the Finance Board, include without limitation:

(1) Misfeasance in office involving a failure to carry out the duties required of the director, officer, employee or agent of a Bank or OF by the Act or other applicable law, regulation, or order of the Finance Board, including without limitation any failure to operate a Bank in a safe and sound manner, to maintain applicable capital standards, to carry out the housing finance mission, or to maintain the ability of any Bank or OF to raise funds in the capital markets;

(2) Commission of an act by a director, officer, employee or agent of a Bank or OF that constitutes a violation of any state or Federal criminal law involving dishonesty or breach of fiduciary duty or trust, including without limitation, corruption, misapplication of funds, extortion, receipt of illegal fees or gratuities, or the conviction of a director, officer, employee or agent for such an illegal act, and irrespective of whether such act(s) were undertaken in connection with the performance of his or her official Bank or OF duties; or

(3) Conduct on the part of a director, officer, employee or agent of a Bank or OF, which need not be intrinsically improper or illegal, that the Finance Board determines to be a material inefficiency or an abuse of authority or discretion and not in the best interest of the Bank, OF or the Bank System.

(d) *Procedure.* (1) *Effective date.* An order issued pursuant to paragraph (a) of this section shall be a final order, which shall become effective upon service upon the executive officer, director, employee or agent of a Bank or the OF, and unless set aside, limited or suspended by the United States Court of Appeals for the District of Columbia Circuit in an action to review the final order under § 908.10, shall remain in effect pending completion of the proceeding.

(2) *Enforcement of order.* If an executive officer, director, employee or agent of a Bank or OF fails to comply with an order issued pursuant to paragraph (a) of this section, the Finance Board may seek to enforce the order by filing an action in the United States District Court for the District of Columbia to obtain injunctive relief against the individual(s) and other relief as may be available from the Court, which the Court shall have jurisdiction to grant. The validity and appropriateness of the suspension or removal order shall not be subject to the review of the United States District Court for the District of Columbia under this paragraph.

(e) *Judicial Review.* Any executive officer, director, employee or agent of a Bank or OF upon whom a suspension or removal order has been served pursuant to § 908.7(a) may seek judicial review of the order exclusively as provided in § 908.10.

(f) *No automatic stay.* The commencement of an action for judicial review of an order pursuant to paragraph (e) of this section shall not operate as a stay of any such suspension or removal order in whole or in part, unless the United States Court of Appeals for the District of Columbia Circuit specifically orders a stay of the order in whole or in part.

§ 908.8 Subpoenas.

(a) *Authority.* The Finance Board, in the course of or in connection with an administrative proceeding or hearing under this part, shall have the authority:

(1) To administer oaths and affirmations;

(2) To take and preserve testimony under oath;

(3) To issue subpoenas and subpoenas *duces tecum;* and

(4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum.*

§ 908.9 Hearings on the record.

(a) *Requirements.* (1) *Venue and record.* Any adjudicatory proceeding or hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record in the District of Columbia.

(2) *Timing.* Any adjudicatory proceeding or hearing shall be set for a date not earlier than 30 days nor later than 60 days after service of a notice of charges under § 908.4 or a determination or order to assess a civil money penalty under § 908.6, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any adjudicatory proceeding or hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a party who has been served with a subpoena under § 908.8 fails to appear at an adjudicatory proceeding or hearing individually or through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease and desist order or the imposition of the penalty for which the hearing is held.

(b) *Issuance of final order.* After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions of this part.

(c) *Judicial review and modification of final orders.* Judicial review of any such final order shall be exclusively as provided for in § 908.10. Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority and commencement of action to obtain judicial review of final order.* Any respondent or party to an adjudicatory proceeding or hearing under §§ 908.4 or 908.6 may obtain judicial review of a final order issued under §§ 908.4 or 908.6 by filing a written petition exclusively in the United States Court of Appeals for the District of Columbia Circuit, within thirty (30) days after the date of service of the final order, to request the court of appeals to modify, terminate or set aside the final order.

(b) *Service.* Rule 4 of Federal Rules of Civil Procedure shall govern service of process of a petition on the Finance Board.

(c) *Filing of record.* The clerk of the Court of Appeals shall transmit a copy of the petition to the Finance Board. The Finance Board shall file with the Court of Appeals the hearing record, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(d) *Jurisdiction.* Upon the filing of a petition, the Court of Appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9 of this part) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final order of the Board of Directors.

(e) *Review.* Review by the Court of Appeals of the final order and the record of the adjudicatory proceeding or hearing conducted pursuant to this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(f) *Order to pay civil money penalty.* In connection with the Court of Appeal's review of a final order pursuant to this part, the Court of Appeals shall have authority to order payment of any civil money penalty assessed by the Finance Board.

(g) *No automatic stay.* The commencement of an action for judicial review of a final order shall not operate as a stay of any such final order, unless the court specifically orders a stay of the final order in whole or in part.

§ 908.11 Jurisdiction, enforcement of orders and notice.

(a) *Enforcement.* The Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any notice, determination or order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with any such notice, determination, or order of the Board of Directors.

(b) *Limitation on jurisdiction.* Except as otherwise provided in the Act or this part, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice, determination or order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice, determination or order.

(c) *Notice of service.* Any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice.

§ 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank or the OF shall not affect the jurisdiction and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

§ 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board on any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Finance Board and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board makes a determination in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final order or final decision of the Board of Directors would seriously threaten the financial health or security of the Bank System, or a Bank individually, the Finance Board may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than 6 years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

§ 908.14 No implied private right of action.

This part shall not create any private right of action on behalf of any person against a Bank, the OF, or any director or executive officer of a Bank or the OF, or impair any existing private right of action under applicable law.

§ 908.15—908.19 [Reserved]

Subpart C—General Rules

§ 908.20 Authority of the board of directors.

The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive the performance of any act that could be done or ordered by the presiding officer.

§ 908.21 Authority of the presiding officer.

(a) *General rule.* All proceedings governed by this subpart shall be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay and assure that a record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding, including settlement conferences, mediation or other consensual methods of dispute resolution;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum,* and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Board of Directors shall have the power to grant any motion to dismiss the proceeding or make a final determination of the merits of the proceeding;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse herself/himself upon motion made by a party or on her or his own motion;

(14) Prepare and present to the Board of Directors a recommended decision as provided in this part;

(15) Establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 908.22 Public hearings.

(a) *General rule.* All adjudicatory proceedings and hearings shall be open to the public, unless the Finance Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. The Finance Board may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within 20 days of service of a notice or a notice of charges, any party or respondent may file with the presiding officer a motion for a non-public hearing and any party or respondent may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Board of Directors, who shall make a final determination. Such motions and replies shall be governed by § 908.45.

(c) *Filing documents under seal.* The Finance Board, in its discretion , may file any document, or any part of any document, under seal if the agency makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 908.23 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Finance Board shall be signed by at least one representative of record in her or his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of her or his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation or Finance Board policy or order; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of her or his knowledge, information, and belief, formed after reasonable inquiry, such expressions or statements are well-grounded in fact and are warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation, or Finance Board policy or order, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 908.24 Ex parte communications.

(a) *Definition.* (1) *Ex parte* communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside the Finance Board (including the person's representative); and

(ii) The presiding officer handling the proceeding, the Board of Directors or any member thereof, a decisional employee of the Finance Board assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Finance Board until the date that the Board of Directors issues its final decision pursuant to § 908.65, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an *ex parte* communication. The Board of Directors, any member thereof individually, the presiding officer, or an employee of the Finance Board, shall not knowingly make or cause to be made an *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by any person identified in paragraph (a) of this section, that person promptly shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication or the written record of an oral communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an *ex parte* communication, or who encourages or solicits another person or entity to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the presiding officer may not consult a person or party on

any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for the Finance Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Board of Directors' review under § 908.65 of the recommended decision, except as a witness or counsel in the public proceedings.

§ 908.25 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with the Finance Board, 1777 F Street, NW, Washington, DC 20006.

(b) *Manner of filing.* Unless otherwise specified by the Finance Board or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media upon any conditions specified by the Finance Board or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 908.23.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Finance Board and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Finance Board or the presiding officer, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 908.26 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 908.26(c).

(c) *By the Finance Board or the presiding officer.* (1) All papers required to be served by the Finance Board or the presiding officer upon a party who has appeared in the proceeding in accordance with § 908.72 may be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 908.72, the Finance Board or the presiding officer shall make service upon the party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Subject to applicable provisions in this part, service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 908.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Finance Board or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add 1 calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Board of Directors or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 908.28 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings. After the referral of the case to the Finance Board pursuant to § 908.63, the Finance Board may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Finance Board's or the presiding officer's own motion.

§ 908.29 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid to witnesses pursuant to the Federal Rules of Civil Procedure (title 28 of the U.S. Code) governing proceedings in the United States district courts, in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Finance Board is the issuer of the subpoena. The Finance Board shall not be responsible for or required to pay any fees to or expenses of any witness not subpoenaed by the Finance Board.

§ 908.30 Settlement or other dispute resolution.

Any respondent may, at any time in the proceeding, unilaterally submit to the Finance Board's counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. Any such offer or proposal shall be made exclusively to the Finance Board. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. Any party to a proceeding under this part may request a neutral individual preside over settlement negotiations. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding under this part or any court.

§ 908.31 Right to supervise the banks.

Nothing contained in this part shall limit in any manner the right of the Finance Board to conduct any examination, inspection, or visitation of any Bank or the OF, or the right of the Finance Board to conduct or continue any form of investigation authorized by law. Nothing set forth in this part shall restrict or be deemed to restrict the authority of the Finance Board to supervise the Banks or to issue or enforce orders or directives pursuant to section 2B(a)(1) or any other provision of the Act.

§ 908.32 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding or hearing, the challenged adjudicatory proceeding or hearing shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding or hearing within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 908.33—39 [Reserved]

Subpart D—Pre-Hearing Proceedings

§ 908.40 Commencement of proceeding and contents of notice of charges.

Proceedings under this subpart are commenced by the issuance of a notice of charges by the Finance Board that must be served upon the respondent. Such notice shall state all of the following:

(a) The legal authority for the proceeding and for the Finance Board's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that the Finance Board is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 908.41 Answer.

(a) *Deadline for filing answer.* Unless otherwise specified by the Finance Board in the notice, respondent shall file an answer within 20 days of service of the notice.

(b) *Content of answer.* An answer shall respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer shall set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, the Finance Board's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding

officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer shall be deemed to be an order issued upon consent.

§ 908.42 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board of Directors or the presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) Consolidation. On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally at an adjudicative proceeding or hearing on the record unless the presiding officer directs that such motion be reduced to writing. Oral motions must be made a part of the record of the adjudicative proceeding or hearing with an accompanying proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions shall be governed by §§ 908.51 and 908.52.

§ 908.46 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, any party to a hearing under this part may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 908.47.

(c) *Forms of discovery.* Document discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories may be permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents shall not be discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's

deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 908.47 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by the Finance Board at § 910.9(g) of this chapter for requests for documents filed under the Freedom of Information Act, 5 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 908.45 requesting the presiding officer order the request be stricken or otherwise limited. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 908.45 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 908.45 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 908.48 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 908.47. The party requesting the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall promptly issue any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may

refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena shall be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 908.47 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with any part of the subpoena that the presiding officer has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 908.49 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum*, requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The witness' unavailability was not produced or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) A subpoena shall be promptly issued upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. The presiding officer shall make a determination that there is a valid basis for issuing the subpoena. The presiding officer may require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 908.25 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section shall accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena shall be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 908.50 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the presiding officer prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section.

(b) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of the presiding officer if it finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Board of Directors for final disposition. In referring the matter to the Board of Directors, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Board of Directors.

§ 908.51 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Board of Directors under § 908.63. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§ 908.52 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision to the Board of Directors as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 908.53 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or at such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery and the exchange of any pre-hearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Pre-hearing conference.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a pre-hearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or pre-hearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any pre-hearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations.

§ 908.54 Pre-hearing submissions.

(a) *Service deadline.* Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party's:

(1) Pre-hearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the pre-hearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 908.55 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 908.8(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§§ 908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

§ 908.60 Conduct of hearings.

(a) *General rules.* (1) *Hearings.* Hearings shall be conducted in accordance with chapter 5 of Title 5 of the United States Code (5 U.S.C. 501–559), and other applicable law, so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination of witnesses as may be required for full disclosure of the facts.

(2) *Order of hearing.* The Finance Board shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. The Finance Board shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 908.61 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence (*see generally,* 28 U.S.C.) is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence (28 U.S.C.) may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Finance Board shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by the Finance Board or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 908.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 908.62 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 908.63 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 908.52(b), the presiding officer shall file with and certify to the Board of Directors, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all pre-hearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Board of Directors, for final determination, the record of the proceeding, the presiding officer shall furnish to the Board of Directors a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 908.64 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 908.63, a party may file with the Finance Board written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Finance Board on motion.

(3) Each party may submit one reply brief within ten days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Finance Board on motion.

§ 908.65 Review by Board of Directors.

(a) *Notice of submission to the Board of Directors.* When the Board of Directors determines that the record in the proceeding is complete, the Finance

Board shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Board of Directors within the time for filing exceptions under § 908.64, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be transcribed.

(c) *Board of Directors's final decision.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case. The final decision of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board of Directors shall render a final decision and issue an appropriate order within 90 days after notification of the parties that the case has been submitted for final decision, unless the Board of Directors orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding and upon other persons required by statute.

§ 908.66 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Board of Directors under § 908.64. A party must exhaust administrative remedies as a precondition to seeking judicial review of any final decision, in whole or in part, issued under § 908.65.

§ 908.67 Stay of order pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Board of Directors may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the Board of Directors. The Board of Directors may, in its discretion and on such terms as it finds just, stay the effectiveness of all or any part of an order of the Board of Directors pending a final decision on a petition for review of that order.

§ 908.68—908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

§ 908.70 Scope.

This subpart contains rules governing practice by parties or their representatives in any proceeding before the Finance Board. These rules of practice may apply to any proceeding before the Finance Board, including adjudicatory proceedings or hearings, or appearances before the Board of Directors, under this part. This subpart also addresses the imposition of sanctions by the Finance Board or a presiding officer against parties or their representatives in an adjudicatory proceeding or hearing under this part. In the sole discretion of the Finance Board, §§ 908.74 and 908.75 may be applied to persons who appear in a representational capacity in an administrative procedure under part 907 of this chapter, an adjudicatory proceeding or hearing under this part 908, or in any other matter connected with presentations to the Finance Board relating to a client's or other principal's rights, privileges, or liabilities, including presentations to or communications with the Board of Directors or any member of the Board of Directors. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart.

§ 908.71 Practice before the finance board.

Practice before the Finance Board for the purposes of this subpart, includes, but is not limited to, transacting any business with the Finance Board as counsel, representative or agent for any other person, unless the Finance Board orders otherwise. Practice before the Finance Board also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with the Finance Board in any certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before the Finance Board does not include work prepared for a Bank solely at the request of the Bank for use in the ordinary course of its business.

§ 908.72 Appearances and practice in proceedings before the Finance Board.

(a) *Appearances in proceedings before the Finance Board.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before the Finance Board.

(2) *By non-attorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, board of director member, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, board of director member, employee, or other agent is not currently suspended or disbarred from practice before the Finance Board. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including the Finance Board, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 908.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably

appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties to an adjudicatory proceeding or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 908.7:

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 908.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding or hearing or before the Board of Directors;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that may be just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Board of Directors for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Finance Board from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 908.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Finance Board may censure any individual who practices or attempts to practice before it or suspend or revoke the privilege to appear or practice before the Finance Board of such individual if, after notice of and opportunity for a hearing in the matter, that individual is found by the Finance Board—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the Act or the rules or regulations issued under the Act or any other law or regulation governing Bank operations;

(v) To have engaged in contemptuous conduct before the Finance Board;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Finance Board for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before the Finance Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Finance Board's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has

been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Federal Housing Enterprise Oversight, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before the Finance Board. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before the Finance Board under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before Finance Board who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Finance Board a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before the Finance Board who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Finance Board. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Finance Board, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Finance Board's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than 1 year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Finance Board's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated upon written application notifying the Finance Board that the grounds have been removed.

(e) *Conferences.* (1) The Finance Board may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) Resignation or voluntary suspension. In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before the Finance Board may consent to censure, suspension or disbarment from practice. At the discretion of the Finance Board, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application supported with proof that the suspension should be terminated. The Finance Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment be limited to written submissions. All hearings held under this section shall be closed to the public unless the Finance Board, on its own motion or upon the request of a party, otherwise directs that the hearing be open to the public.

Dated: November 30, 2000.

By the Board of Directors of the Federal Housing Finance Board.

William C. Apgar,

HUD Secretary's Designee to the Board.

[FR Doc. 00–31978 Filed 12–15–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–AWP–13]

Proposed Establishment and Redesignation of Restricted Areas; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to redesignate Restricted Area (R) 4804 Twin Peaks, NV, as R–4804A, and establish R–4804B from FL 180 to FL 350. Additionally, this action proposes to redesignate R–4813 Carson Sink, NV, as R–4813A, and establish R–4813B from FL 180 to FL 350. This action also proposes to revoke R–4802 Lone Rock, NV, and designate the U.S. Navy (USN) Naval Strike and Warfare Center Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

DATES: Comments must be received on or before February 1, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 00-AWP–13, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division,

ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AWP–13.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: Field Manager, Bureau of Land Management 5665 Morgan Mill Road, Carson City, NV 89701 ATTN: Navy EIS Project Manager. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM 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 the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to redesignate R–4804 Twin Peaks, NV, as R–4804A, and establish R–4804B from FL 180 to FL 350. Additionally, this action proposes to redesignate R–4813 Carson Sink, NV, as R–4813A, and establish R–4813B from FL 180 to FL 350. The proposed establishing of restricted areas (R–4804B and R–4813B respectively) would increase the vertical limits of two existing restricted areas but would not increase the lateral boundaries of the existing airspace. This action also proposes to revoke R–4802 Lone Rock, NV, and designate the USN Naval Strike and Warfare Center Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

The USN is requesting these modifications to meet the Chief of Naval Operations training requirements resulting from a real world threat environment that requires flight crews to develop and maintain an ability to deliver ordnance (bombs, missiles, bullets, etc.) from high altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

Environmental Review

This proposal will be subjected to further environmental review prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 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.

§ 73.32 [Amended]

2. Section 73.48 is amended as follows:

* * * * *

R–4802 Lone Rock, NV [Revoke]

R–4804 Twin Peaks, NV [Revoke]

R–4813 Carson Sink, NV [Revoke]

R–4804A Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″ N., long. 118°12′45″ W.; and a 3-nautical-mile radius centered at lat. 39°14′15″ N., long. 118°17′33″ W.

Designated altitudes. Surface to but not including FL 180 excluding 2,000 feet AGL up to but not including 8,500 feet MSL, north of and within 1 NM of U.S. Highway 50 between the intersection of U.S. Highway 50 with long. 118°26′00″ W., and long. 118°08′00″ W.

Controlling agency. FAA, Oakland ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4804B Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″ N., long. 118°12′45″ W.; and a 3-nautical-mile radius centered at lat. 39°14′15″ N., long. 118°17′33″ W.;

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813A Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″ N., Long. 118°38′04″ W.; to lat. 40°01′00″ N., long. 118°15′04″ W.; to lat. 40°01′00″ N., long. 118°01′03″ W.; to lat. 39°58′00″ N., long. 118°01′03″ W.; to lat. 39°38′00″ N., long. 118°17′03″ W.; thence via the arc of a 15 NM radius circle centered at lat. 39°52′36″ N., long. 118°20′31″ W.; to lat. 39°45′50″ N., long. 118°38′04″ W.; thence to point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813B Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″ N., Long. 118°38′04″ W.; to lat. 40°01′00″ N., long. 118°15′04″ W.; to lat. 40°01′00″ N., long. 118°01′03″ W.; to lat. 39°58′00″ N., long. 118°01′03″ W.; to lat. 39°38′00″ N., long. 118°17′03″ W.; thence via the arc of a 15 NM radius circle centered at lat. 39°52′36″ N., long. 118°20′31″ W.; to lat. 39°45′50″ N., long. 118°38′04″ W.; thence to point of beginning.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

* * * * *

Issued in Washington, DC, on December 12, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–32177 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[REG–106542–98]

RIN 1545–AW24

Election To Treat Trust as Part of an Estate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that relate to an election to have certain revocable trusts treated and taxed as part of an estate. This document provides the procedures and requirements for making the election, rules regarding the tax treatment of the trust and the estate while the election is in effect, and rules regarding the termination of the election. This document also provides clarification of the reporting rules for a trust, or portion of a trust, that is treated as owned by the grantor, or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code, for the taxable year ending with the death of the grantor or other person. In addition, this document provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 19, 2001. Requests to speak (with outlines of oral comments) at a public hearing scheduled for February 21, 2001, at 10 a.m., must be submitted by January 31, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–106542–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–106542–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html (the IRS Internet site). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Faith Colson, (202) 622–3060; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1578.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the 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.

Background

This document contains proposed regulations under section 645 relating to certain revocable trusts for which an election is made to be treated and taxed as part of an estate. This document also contains proposed amendments to the Income Tax Regulations under section 671 relating to reporting for a trust, or portion of a trust, for the taxable year ending with the death of the grantor or other person treated as the owner of the trust, or portion of the trust.

Explanation of Provisions

A. Overview of Section 645

Both estates and trusts can function to settle the affairs of a decedent and distribute assets to heirs. In the case of a revocable inter vivos trust, the grantor transfers property to a trust that the grantor may revoke during the grantor's lifetime. When the grantor dies, the power to revoke ceases, and the trustee performs the settlement functions typically performed by an estate executor. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997).

Section 1305 of the TRA 1997 added section 646 to the Internal Revenue Code. Section 646 was redesignated section 645 by section 6013(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998). Section 645 provides that an election may be made to have certain revocable trusts treated and taxed as part of an estate.

Under section 645, if both the executor (if any) of an estate and the trustee of a qualified revocable trust (QRT) elect the treatment provided in section 645, the trust shall be treated and taxed for income tax purposes as part of the estate (and not as a separate trust) during the election period.

A QRT is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). In accordance with the legislative history

accompanying section 645, the proposed regulations provide that a trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party is not a QRT. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997). In addition, a trust that was treated as owned by the decedent under section 676 by reason of a power held by the decedent that was exercisable by the decedent only with the approval or consent of another person is not a QRT. Further, a QRT must be a domestic trust under section 7701(a)(30)(E). A section 645 election for a QRT must result in a domestic estate under section 7701(a)(30)(D). A section 645 election may be made with respect to more than one QRT.

B. The Election

The section 645 election may be made whether or not a personal representative is appointed for the decedent's estate. Under the proposed regulations, if a personal representative is appointed for the decedent's estate, the personal representative and the trustee of the QRT make the section 645 election by attaching a statement to the Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' filed for the first taxable year of the decedent's estate (related estate). If a personal representative is not appointed for the decedent's estate, the trustee makes a section 645 election for the QRT by attaching a statement to the Form 1041 filed for the first taxable year of the trust treating the trust as an estate.

Rev. Proc. 98–13 (1998–1 C.B. 370) sets forth procedures for making the section 645 election. These proposed regulations, when finalized, will replace Rev. Proc. 98–13. The proposed regulations, in some instances, contain different procedures than those provided in Rev. Proc. 98–13. Rev. Proc. 98–13, in most situations, requires a trust that will make a section 645 election to obtain a taxpayer identification number (TIN) and file a Form 1041 for the trust's short taxable year beginning with the decedent's death and ending December 31 of that year. In these situations, Rev. Proc. 98–13 provides that the section 645 election is made at the time the Form 1041 is filed for the trust. If a Form 1041 is not required to be filed for the trust, the election is considered made when the Form 1041 is filed for the estate. The proposed regulations, however, provide that if a section 645 election will be made for a trust, the trustee and the personal representative, if any, may choose not to obtain a TIN for the trust or file a Form 1041 for the trust's short taxable year. Under the proposed regulations, the section 645 election is considered made only upon the filing of a Form 1041, with the required election statement attached, for the first taxable year of the related estate, or, if there is no personal representative, the first taxable year of the trust filing as an estate.

C. General Form 1041 Filing Requirements and TINs for the Related Estate and Electing Trust During the Election Period

During the election period, the personal representative files one Form 1041 for the combined electing trust and related estate under the name and TIN of the related estate. Thus, the electing trust must furnish payors of the trust with the TIN of the related estate. Except as required under the separate share rule of section 663(c), for purposes of filing the Form 1041 and computing the tax, the items of income, deduction, and credit of the electing trust and the related estate are combined. The proposed regulations do not provide rules for apportioning the tax liability of the combined estate and electing trust. The personal representative and trustee must allocate the tax burden of the combined electing trust and related estate to the trust and the estate in a manner that reasonably reflects the tax obligations of each. If the tax burdens are not reasonably allocated, gifts may be deemed to have been made.

If there is no personal representative, the trustee of the electing trust must file a Form 1041 treating the trust as an estate under section 645 during the election period. The trustee of the trust must obtain a TIN to be used by the trust during the election period to file as an estate and must furnish this TIN to payors of the trust.

D. Tax Treatment of the Electing Trust and Related Estate During the Election Period

Under the proposed regulations, the personal representative treats the electing trust as part of the related estate for all purposes of subtitle A of the Internal Revenue Code.

The electing trust and related estate are treated as separate shares under section 663(c) for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. The proposed regulations provide rules for adjusting the DNI of the separate shares with respect to distributions made from one share to another share of the combined electing trust and related estate to which sections 661 and 662 would apply had the distribution been made to a beneficiary other than another share. Under the proposed regulations, the share making the distribution reduces its DNI by the amount of the distribution deduction that it would have been entitled to under section 661 had the distribution been made to a beneficiary other than another share of the combined related estate and electing trust, and, solely for purposes of calculating its DNI, the share receiving the distribution increases its gross income by this amount.

If there is no personal representative, the trustee of the electing trust treats the trust as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, the trustee of the electing trust may adopt a taxable year other than a calendar year.

E. Duration of the Election Period

The proposed regulations provide that the election period begins on the date of the decedent's death and terminates on the day before the applicable date. If a Form 706 is not required to be filed for the decedent's estate, the applicable date is the day which is two years after the date of the decedent's death.

If a Form 706 is required to be filed, the applicable date is the day that is 6 months after the date of final determination of liability for estate tax. The proposed regulations provide that the final determination of liability for estate tax is the earliest day on which any of the following has occurred: (A) The issuance of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter; (B) the final disposition of a claim for refund that resolves the liability for the estate tax, unless suit is instituted within six months of the disposition of the claim; (C) the execution of a settlement agreement that resolves the liability for estate tax; (D) the issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for estate tax unless a notice of appeal or petition for certiorari is filed within 90 days after the issuance of the decision, judgment, decree, or other order of a court; or (E) the expiration of the period of limitations for assessment of the estate tax provided in section 6501.

F. Tax Treatment of the Electing Trust and Related Estate Upon Termination of the Election Period

At the close of the last day of the election period, the combined related estate and electing trust, if there is a personal representative, or the electing trust, if there is no personal representative, is deemed to distribute all the assets and liabilities of the share

(or shares) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined related estate and electing trust, or the electing trust, as appropriate, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust must include the deemed distribution in gross income to the extent required under section 662.

At the end of the election period, the new trust must obtain a new TIN. The related estate continues to report under the TIN assigned to the combined related estate and electing trust during the election period.

Following the termination of the election period, the taxable year of the new trust must be the calendar year. The related estate must continue to use the taxable year chosen by the combined related estate and electing trust during the election period.

G. Clarification of the Reporting Rules for Grantor Trusts Under § 1.671–4

In the process of drafting these proposed regulations regarding section 645, the IRS and the Treasury Department received many taxpayer questions concerning the section 645 election procedures and the proper application of the reporting rules under § 1.671–4 to a trust, or a portion of a trust, treated as owned by a grantor or another person for the taxable year ending with the death of the grantor or other person. Accordingly, these proposed regulations amend § 1.671–4 to clarify those reporting rules.

The proposed regulations clarify that a trust, or portion of a trust, reports under § 1.671–4 for the taxable year that ends with the death of the grantor or other person (decedent) treated as the owner of the trust. If the trust was filing a Form 1041 under § 1.671–4(a) during the life of the decedent, the proposed regulations also provide that the due date for the return for the trust or portion of the trust for the taxable year ending with the death of the decedent shall be the date specified under section 6072 as though the decedent had lived throughout the decedent's last taxable year.

The proposed regulations provide that a trust that was wholly owned by the decedent must obtain a new TIN upon the death of the decedent whether or not a TIN was obtained for the trust prior to the death of the decedent; however, if a section 645 election will be made for the trust, a new TIN need not be obtained for the trust. For administrative convenience, the proposed regulations clarify that with respect to a trust which was treated as owned by two or more grantors or other persons, following the death of one of the deemed owners, the trust, including the portion formerly owned by the decedent (if it remains part of the original trust following the death of the deemed owner), continues to report under the TIN used by the trust prior to the death of the decedent.

Proposed Effective Date

These regulations are proposed to apply on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the understanding of the IRS and Treasury Department that the number of trusts and estates making the election is not substantial, and none are small entities within the meaning of the Regulatory Flexibility Act. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 21, 2001, beginning at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.645–1 also issued under 26 U.S.C. 645. * * *

Par. 2. Section 1.641(b)–3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 1.641(b)–3 Termination of estates and trusts.

(a) * * * Notwithstanding the above, if the estate has joined a valid election under section 645 to treat a qualified revocable trust, as defined under section 645(b)(1), as part of the estate, the estate shall not terminate under this paragraph prior to the termination of the section 645 election period. See section 645 and the regulations thereunder for rules regarding the termination of the section 645 election period.

* * * * *

Par. 3. In § 1.642(c)–1, the last sentence of paragraph (a)(1) is revised to read as follows:

§ 1.642(c)–1 Unlimited deduction for amounts paid for a charitable purpose.

(a) * * * (1) * * * In applying this paragraph without reference to paragraph (b) of this section, a deduction shall be allowed for an amount paid during the taxable year in respect of gross income received in a previous taxable year, but only if no deduction was allowed for any previous taxable year to the estate or trust, or in the case of a section 645 election, to a related estate, as defined under § 1.645–1(b), for the amount so paid.

* * * * *

Par. 4. Section 1.645–1 is added under a new undesignated center heading to read as follows:

Election by Certain Revocable Trusts To Be Treated as Part of Estate

§ 1.645–1 Election by certain revocable trusts to be treated as part of estate.

(a) *In general.* If an election is filed for a qualified revocable trust, as defined in paragraph (b)(1) of this section, in accordance with the rules set forth in paragraph (c) of this section, the qualified revocable trust is treated and taxed as part of its related estate, as defined in paragraph (b)(4) of this section (and not as a separate trust) during the election period, as defined in paragraph (b)(6) of this section. Rules regarding the use of taxpayer identification numbers (TINs) by an electing trust, as defined in paragraph (b)(2) of this section, are in paragraph (d) of this section. Rules regarding obtaining a TIN and filing requirements for a qualified revocable trust for which a section 645 election will or may be made are also in paragraph (d) of this section. Rules regarding the tax treatment of an electing trust and related estate and the general filing requirements for the combined entity during the election period are in paragraph (e)(2) of this section. Rules regarding the tax treatment of an electing trust and its filing requirements during the election period if no personal representative, as defined in paragraph (b)(5) of this section, is appointed for a related estate are in paragraph (e)(3) of this section. Rules for determining the duration of the section 645 election period are in paragraph (f) of this section. Rules regarding the tax effects of the termination of the election are in paragraph (h) of this section. Rules regarding the tax consequences of the appointment of a personal representative after a trustee has made a section 645 election believing that a personal representative would not be appointed for a related estate are in paragraph (g) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Qualified revocable trust.* A *qualified revocable trust* (QRT) is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). A trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent only with the approval or consent of another person is not a QRT. In addition, a trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party is not a QRT. A QRT must be a domestic trust as defined in section 7701(a)(30)(E). A section 645 election for a QRT must result in a domestic estate as defined in section 7701(a)(30)(D).

(2) *Electing trust.* An *electing trust* is a QRT for which a valid section 645 election has been made. Once a section 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

(3) *Decedent.* The *decedent* is the individual who was treated as the owner of the QRT under section 676 on the date of that individual's death.

(4) *Related estate.* A *related estate* is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death. A related estate must be a domestic estate as defined in section 7701(a)(30)(D).

(5) *Personal representative.* A *personal representative* is an executor or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures.

(6) *Election period.* The *election period* is the period of time during which an electing trust is treated and taxed as part of its related estate. The rules for determining the duration of the election period are in paragraph (f) of this section.

(7) *Payor.* A *payor* is any person who is required by any provision of the Internal Revenue Code and the regulations thereunder to make any type of information return with respect to an electing trust or the related estate for the taxable year. A payor includes a person who makes payments to an electing trust or related estate and a person who collects (or otherwise acts as a middleman with respect to) payments on behalf of an electing trust or related estate.

(c) *The election*—(1) *Filing the election if there is a personal representative*—(i) *Time and manner for filing the election.* If there is a personal representative of the related estate, the trustee of the QRT and the personal representative of the related estate make an election under section 645 and this section to treat a QRT as part of its related estate in a written statement described in paragraph (c)(1)(ii) of this section. The statement must be attached to the Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' filed for the first taxable year of the related estate. See paragraph (e)(2) for rules regarding the filing of this return. For the election to be valid, the Form 1041 and the attached statement must be filed not later than the time prescribed under section 6072 (including extensions) for filing the return for such taxable year.

(ii) *Written statement.* The written statement must—

(A) Identify the election as an election under section 645;

(B) Contain the name, address, date of death, and TIN of the decedent;

(C) Contain the name and address of the QRT and, if a TIN has been obtained after the death of the decedent, the TIN of the QRT;

(D) Contain the name, address and TIN of the related estate;

(E) Provide a representation that the trust for which the election is being made meets the definition of a QRT under section 645 and paragraph (b)(1) of this section;

(F) Contain a statement from the personal representative, signed and dated under penalties of perjury, stating that the personal representative elects to treat the QRT as part of the related estate under section 645 and that the personal representative understands that the personal representative is required to make a timely return of income for the combined related estate and QRT on Form 1041 and to pay timely any tax due thereon; and

(G) Contain a statement from the trustee of the QRT, signed and dated

under penalties of perjury, stating that the trustee elects to treat the trust as part of the related estate under section 645 and agrees to cooperate with the personal representative to insure that a return of income is timely made for the combined related estate and QRT, and that any tax due thereon is timely paid.

(2) *Filing the election if there is no personal representative*—(i) *Time and manner for filing the election.* If there is no personal representative for a related estate, an election to treat a QRT as an estate is made by the trustee, in a written statement described in paragraph (c)(2)(ii) of this section. The statement must be attached to the Form 1041 filed for the first taxable year of the QRT taking into account the trustee's election to treat the trust as an estate under section 645. See paragraph (e)(3) for other rules regarding the filing of this return. For the election to be valid, the Form 1041 of the QRT and the attached statement must be filed not later than the time prescribed under section 6072 (including extensions) for filing the return for such taxable year.

(ii) *Written statement.* The written statement must—

(A) Identify the election as an election under section 645;

(B) Contain the name, address, date of death, and TIN of the decedent;

(C) Contain the name and address of the QRT and, if a TIN has been obtained after the death of the decedent, the TIN of the QRT;

(D) Provide a representation that the trust for which the election is being made meets the definition of a QRT under section 645 and paragraph (b)(1) of this section;

(E) Provide a representation that there is no personal representative and to the trustee's knowledge and belief, one will not be appointed;

(F) Contain the TIN obtained by the trust to file as an estate under § 301.6109–1(a)(4)(ii)(B) of this chapter; and

(G) Contain a statement from the trustee of the QRT, signed and dated under penalties of perjury, stating that the trustee elects to treat the trust as an estate under section 645 and that the trustee understands that the trustee is required to make a timely return of income for the trust on Form 1041 taking into account the section 645 election and to pay timely any tax due thereon.

(d) *TIN for an electing trust and QRT*—(1) *Obtaining a TIN*—(i) *For an electing trust*—(A) *If there is a personal representative.* If there is a personal representative, a TIN must be obtained for the related estate but the electing trust is not required to obtain a TIN in its own name. See § 301.6109-1(a)(4)(ii)(A)(1) of this chapter for rules for completing the Form SS–4, ''Application for Employment Identification Number,'' filed for the related estate.

(B) *If there is no personal representative.* If there is no personal representative, the trustee must obtain a TIN to file as an estate. See § 301.6109–1(a)(4)(ii)(B) of this chapter for rules regarding obtaining a TIN for an electing trust to file as an estate during the election period. The trustee is not required to obtain a TIN for the electing trust to file as a trust.

(ii) *Obtaining a TIN and filing a Form 1041 for a QRT*—(A) *Option not to obtain a TIN or file a Form 1041 for a QRT for which a section 645 election will be made.* If a section 645 election will be made for a QRT, the personal representative of the related estate, if any, and the trustee of the QRT may treat the QRT as an electing trust from the decedent's date of death until the due date for the section 645 election. Accordingly, the trustee of the QRT is not required to obtain a TIN for the QRT following the death of the decedent as required under § 301.6109–1(a)(3)(i) of this chapter or file a Form 1041 for the QRT for the short taxable year beginning with the decedent's date of death and ending with December 31 of that year. However, if a QRT is treated as an electing trust under this paragraph from the decedent's date of death until the due date for the section 645 election and a valid section 645 election is not made for the QRT, the QRT will be subject to penalties and interest for failing to obtain a TIN and file a Form 1041 and pay the tax due thereon.

(B) *Requirement to obtain a TIN and file a Form 1041 for QRT if paragraph (d)(1)(ii)(A) of this section does not apply*—(*1*) *Requirement to obtain TIN and file Form 1041.* If the trustee of the QRT and the personal representative of the related estate, if any, do not treat the QRT as an electing trust as provided under paragraph (d)(1)(ii)(A) of this section, or if the trustee of the electing trust and the personal representative, if any, are uncertain whether a section 645 election will be made for a QRT, the trustee of the QRT must obtain a TIN in the name of the QRT as required under § 301.6109–1(a)(3)(i) of this chapter and must file a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year (unless, the QRT is not required to file a Form 1041 under section 6012 for this period).

(*2*) *Requirement to amend return if section 645 election is made.* If a valid section 645 election is made for a QRT after a Form 1041 is filed for the QRT pursuant to paragraph (d)(1)(ii)(B)(*1*) of this section, the trustee must amend the Form 1041. The trustee must indicate on the Form 1041 that the return is a final return and must attach a copy of the statement described in paragraph (c) of this section to the amended Form 1041 filed pursuant to this paragraph. In addition, the trustee must provide the following statement at the top of the return: ''FILED PURSUANT TO § 1.645–1.'' The QRT's items of income, deduction, and credit must be excluded from the amended Form 1041 filed under this paragraph and must be included on the Form 1041 filed for the first taxable year of the related estate under paragraph (e)(2)(ii)(A) of this section, if there is a personal representative, or for the first taxable year of the electing trust under (e)(3)(ii) of this section, if there is no personal representative. The section 645 election is not considered made upon the filing, under this paragraph, of an amended Form 1041 for the QRT with the attached statement. To be valid, a section 645 election must be filed in the time and manner specified in paragraph (c) of this section.

(2) *Furnishing TIN to payors*—(i) *If there is a personal representative for a related estate.* If there is a personal representative, all payors of an electing trust shall be furnished a Form W–9, ''Request for Taxpayer Identification Number and Certification,'' or an acceptable substitute Form W–9 with the name of the related estate as the primary name on the form, the name of the electing trust as the secondary name on the form, the TIN of the related estate, and the address of the trustee. The form must be signed under penalties of perjury by the personal representative. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending on the type of reportable payments made by the payor to the trust.

(ii) *If there is no personal representative.* If there is no personal representative, the trustee of the electing trust shall furnish a Form W–9 or an acceptable substitute Form W–9 with the name required by, and the TIN obtained under, § 301.6109–1(a)(4)(ii)(B) of this chapter. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending on the type of reportable payments made by the payor to the trust.

(e) *Tax treatment and general filing requirements of electing trust and*

related estate during the election period—(1) *Effect of election.* The section 645 election once made is irrevocable.

(2) *If there is a personal representative*—(i) *Tax treatment of the combined electing trust and related estate.* If there is a personal representative, during the election period the personal representative treats the electing trust as part of the related estate for all purposes of subtitle A of the Internal Revenue Code. For example, the electing trust is treated as part of the related estate for purposes of the subchapter S shareholder requirements of section 1361(b)(1) and the special offset for rental real estate activities in section 469(i)(4).

(ii) *Filing requirements*—(A) *Filing the Form 1041 for the combined electing trust and related estate during the election period.* If there is a personal representative, one income tax return is filed under the name and TIN of the related estate for the electing trust and the related estate. See § 301.6109–1(a)(4)(ii)(A)(1) of this chapter. Except as required under the separate share rule of section 663(c), for purposes of filing the Form 1041 under this paragraph and computing the tax, the items of income, deduction, and credit of the electing trust and related estate are combined. One personal exemption in the amount of $600 is permitted under section 642(b) and the tax is computed under section 1(e), taking into account section 1(h), for the combined taxable income.

(B) *Filing a Form 1041 for the electing trust is not required.* The trustee of the electing trust does not file a Form 1041 for the electing trust during the election period. In certain situations, the trustee of a QRT may be required to file a Form 1041 for the QRT's short taxable year beginning with the decedent's date of death and ending December 31 of that year. See paragraph (d)(1)(ii) of this section.

(iii) *Application of the separate share rules*—(A) *Distributions to beneficiaries (other than to a share (or shares) of the combined electing trust and related estate).* Under the separate share rules of section 663(c), the electing trust and related estate are treated as separate shares for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. Further, the electing trust share or the related estate share may each contain two or more shares. Thus, if during the taxable year, a distribution is made by the electing trust or the related estate, the DNI of the share making the distribution must be determined and the distribution provisions of sections 661 and 662 must be applied using the separately determined DNI applicable to the distributing share.

(B) *Adjustments to the DNI of the separate shares for distributions between shares to which sections 661 and 662 would apply.* A distribution from one share to another share to which sections 661 and 662 would apply if made to a beneficiary other than another share of the combined related estate and electing trust affects the computation of the DNI of the share making the distribution and the share receiving the distribution. The share making the distribution reduces its DNI by the amount of the distribution deduction that it would be entitled to under section 661, had the distribution been made to another beneficiary, and, solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount. The distribution has the same character in the hands of the recipient share as in the hands of the distributing share. The following example illustrates the provisions of this paragraph (e)(2)(iii)(B):

Example. (i) A's will provides that after the payment of debts, expenses, and taxes, the residue of A's estate is to be distributed to Trust, an electing trust. The sole beneficiary of Trust is C. The estate share has $15,000 of gross income, $5,000 of deductions, and $10,000 of taxable income and DNI for the taxable year based on the assets held in A's estate. During the taxable year, A's estate distributes $15,000 to Trust. The distribution reduces the DNI of the estate share by $10,000, the amount of the distribution deduction A's estate would be entitled to if A's estate made the distribution to a beneficiary other than Trust.

(ii) For the same taxable year, the trust share has $25,000 of gross income and $5,000 of deductions. None of the modifications provided for under section 643(a) apply. In calculating the DNI for the trust share, the gross income of the trust share is increased by $10,000, the amount of the reduction in the DNI of the estate share as a result of the distribution to Trust. Thus, solely for purposes of calculating DNI, the trust share has gross income of $35,000, and taxable income of $30,000. Therefore, the trust share has $30,000 of DNI for the taxable year.

(iii) During the same taxable year, Trust distributes $35,000 to C. The distribution deduction reported on the Form 1041 filed for A's estate and Trust is $30,000. As a result of the distribution by Trust to C, C must include $30,000 in gross income for the taxable year. The gross income reported on the Form 1041 filed for A's estate and Trust is $40,000.

(iv) *Application of the governing instrument requirement of section 642(c).* A deduction is allowed in computing the taxable income of the combined related estate and electing trust to the extent permitted under section 642(c) for—

(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in section 170(c); and

(B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in section 170(c).

(3) *If there is no personal representative*—(i) *Tax treatment of the electing trust.* If there is no personal representative, during the election period the trustee treats the electing trust as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, an electing trust is treated as an estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities under section 469(i)(4). The trustee may also adopt a taxable year other than a calendar year.

(ii) *Filing the Form 1041 for the electing trust.* If there is no personal representative, during the election period the trustee of the electing trust must file Form 1041 treating the trust as an estate. See § 301.6109–1(a)(4)(ii)(B) of this chapter for rules regarding the name and TIN to be used in filing a Form 1041 under this paragraph (e)(3)(iii). Any return filed by a trustee of an electing trust, in accordance with this paragraph, shall be treated under section 6012 as a return filed for the electing trust and not as a return filed for any subsequently discovered related estate. Accordingly, the period of limitations provided in section 6501 for assessments with respect to a subsequently discovered related estate does not start until a return is filed with respect to the related estate.

(f) *Duration of election period*—(1) *In general.* The election period begins on the date of the decedent's death and terminates on the day before the applicable date. The election does not apply to successor trusts.

(2) *Definition of applicable date*—(i) *Applicable date if no Form 706 (United States Estate (and Generation Skipping Transfer) Tax Return) is required to be filed.* If a Form 706 is not required to be filed for the decedent's estate, the applicable date is the day which is 2 years after the date of the decedent's death.

(ii) *Applicable date if a Form 706 is required to be filed.* If a Form 706 is required to be filed for the decedent's

estate, the applicable date is the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under section 645, the date of final determination of liability is the earliest day on which any of the following has occurred—

(A) The issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter;

(B) The final disposition of a claim for refund, as defined in paragraph (f)(2)(iii) of this section, that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim;

(C) The execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax;

(D) The issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or

(E) The expiration of the period of limitations for assessment of the estate tax provided in section 6501.

(iii) *Definition of final disposition of claim for refund.* For purposes of paragraph (f)(2)(ii)(B) of this section, a claim for refund shall be deemed finally disposed of by the Secretary when all items have been either allowed or disallowed. If a waiver of notification with respect to disallowance is filed with respect to a claim for refund prior to disallowance of the claim, the claim for refund will be treated as disallowed on the date the waiver is filed.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. A died on October 20, 1999. The personal representative of A's estate and the trustee of Trust, an electing trust, made a section 645 election. A Form 706 is not required to be filed for A's estate. The applicable date is October 20, 2001, the day that is two years after A's date of death. The last day of the election period is October 19, 2001. Beginning October 20, 2001, Trust will no longer be treated and taxed as part of A's estate.

Example 2. Assume the same facts as *Example 1,* except that a Form 706 is required to be filed for A's estate. The Internal Revenue Service issues an estate tax closing letter accepting the Form 706 as filed on March 15, 2001. The estate does not file a claim for refund by September 15, 2001, the day that is six months after the date of issuance of the estate tax closing letter. The final determination of liability is March 15, 2001 and the applicable date is September 15, 2001. The last day of the election period is September 14, 2001. Beginning September 15, 2001, Trust will no longer be treated and taxed as part of A's estate.

Example 3. Assume the same facts as *Example 1,* except that a Form 706 is required to be filed for A's estate. The Form 706 is audited and a notice of deficiency authorized under section 6212 is mailed to the personal representative of A's estate as a result of the audit. The personal representative files a petition in Tax Court. The Tax Court issues a decision resolving the liability for estate tax on December 14, 2003 and neither party appeals. The final determination of liability is December 14, 2003. The applicable date is June 14, 2004, the day that is six months after the date of final determination of liability. The last day of the election period is June 13, 2004. Beginning June 14, 2004, Trust will no longer be treated and taxed as part of A's estate.

(g) *Personal Representative appointed after the section 645 election is made*—(1) *Effect on the election.* If a personal representative for the related estate is not appointed until after the trustee has made a valid section 645 election, the personal representative is deemed to agree to the election and to accept the associated responsibilities unless, within 60 days of appointment, the personal representative notifies the trustee in writing of the personal representative's refusal to agree to the election. If the personal representative refuses to agree to the election, the election period terminates the day before the effective date of the personal representative's appointment. If the personal representative and the trustee are the same person, the personal representative cannot refuse to agree to the election.

(2) *Continuation of election period.* If the personal representative does not refuse to agree to the section 645 election, the personal representative of the related estate and the trustee of the electing trust must file amended Forms 1041 reflecting the items of income, deduction, and credit of the related estate and the electing trust for all taxable years ending after the death of the decedent. If the period of limitations for making assessments has expired with respect to the electing trust for any of the Forms 1041 filed by the trustee, the personal representative must obtain a TIN for the related estate and file Forms 1041 for any items of income, deduction, and credit of the related estate that cannot be properly included on amended forms for the electing trust.

(3) *Termination of the election period.* If the election period terminates as a result of the personal representative's refusing to agree to the election, the personal representative must obtain a new TIN for the related estate. The personal representative must file returns under the new TIN for all taxable years of the related estate ending after the death of the decedent. The trustee of the electing trust is not required to amend any returns filed for the electing trust during the election period. Following termination of the election period, the trustee of the electing trust must obtain a new TIN as required under § 301.6109–1(a)(4)(iii) of this chapter.

(h) *Treatment of an electing trust and related estate following termination of the election*—(1) *The share (or shares) comprising the electing trust is deemed to be distributed by its related estate upon termination of the election period.* On the close of the last day of the election period, the combined related estate and electing trust, if there is a personal representative, or, the electing trust, if there is no personal representative, is deemed to distribute the share (or shares, as determined under section 663(c)) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined related estate and electing trust, if there is a personal representative, or the electing trust, if there is no personal representative, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust shall include such distribution in gross income to the extent required under section 662.

(2) *Filing of the Form 1041 upon the termination of the section 645 election*—(i) *If there is a personal representative*—If there is a personal representative, the Form 1041 filed under the name and TIN of the related estate for the taxable year in which the election terminates includes—

(A) The items of income, deduction, and credit of the electing trust attributable to the period beginning with the first day of the related estate and electing trust's taxable year and ending with the last day of the election period;

(B) The items of income, deduction, and credit, if any, of the related estate for the taxable year; and

(C) A deduction for the deemed distribution of the share (or shares) comprising the electing trust to the new trust as provided for under paragraph (h)(1) of this section.

(ii) *If there is no personal representative.* If there is no personal representative, the taxable year of the electing trust closes on the last day of the election period. A Form 1041 is filed in the manner prescribed under

paragraph (e)(3)(ii) of this section reporting the items of income, deduction, and credit of the electing trust for the short period ending with the last day of the election period. The Form 1041 filed under this paragraph includes a distribution deduction for the deemed distribution provided for under paragraph (h)(1) of this section. The Form 1041 must indicate that it is a final return.

(3) *Use of TINs following termination of the election.* Upon termination of the section 645 election, a former electing trust must obtain a new TIN, as required under § 301.6109–1(a)(4)(iii) of this chapter. If the related estate continues after the termination of the election period, the related estate must continue to use the TIN assigned to the estate during the election period.

(4) *Taxable year of estate and trust upon termination of the election*—(i) *Estate.* Upon termination of the election, if the estate will continue, the taxable year of the estate is the same taxable year used during the election period.

(ii) *Trust.* Upon termination of the election, the taxable year of the new trust is the calendar year. See section 644.

(i) *Reserved.*

(j) *Effective date.* This section applies on or after the date final regulations are published in the **Federal Register**.

Par. 5. Section 1.671–4 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for newly designated paragraph (d)(1).

2. Paragraph (d)(2) is added

3. Paragraphs (h) and (i) are redesignated as paragraphs (i) and (j).

4. New paragraph (h) is added.

The additions and revisions read as follows:

§ 1.671–4 Method of Reporting.

* * * * *

(d) *Due date and other requirements with respect to statement required to be furnished by trustee*—(1) *In general.*

* * *

(2) *Statement for the taxable year ending with the death of the grantor or other person treated as the owner of the trust.* If a trust ceases to be treated as owned by the grantor, or other person, by reason of the death of that grantor or other person (decedent), the due date for the statement required to be furnished for the taxable year ending with the death of the decedent shall be the date specified by section 6034A(a) as though the decedent had lived throughout the decedent's last taxable year. See paragraph (h) of this section for special reporting rules for a trust or portion of the trust that ceases to be treated as owned by the grantor or other person by reason of the death of the grantor or other person.

* * * * *

(h) *Reporting rules for a trust, or portion of a trust, that ceases to be treated as owned by a grantor or other person by reason of the death of the grantor or other person*—(1) *Definition of decedent.* For purposes of this paragraph (h), the *decedent* is the grantor or other person treated as the owner of the trust, or portion of the trust, under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code on the date of death of that person.

(2) *In general.* The provisions of § 1.671–4 apply to a trust, or portion of a trust, treated as owned by a decedent for the taxable year that ends with the decedent's death. Following the death of the decedent, the trust or portion of a trust that ceases to be treated as owned by the decedent, by reason of the death of the decedent, may no longer report under § 1.671–4. A trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the death of the decedent. See § 301.6109–1(a)(3)(i) of this chapter for rules regarding obtaining a TIN upon the death of the decedent. An electing trust as defined in § 1.645–1(b)(2) is not required to obtain a TIN following the death of the decedent. A qualified revocable trust, as defined in section 645(b) and § 1.645–1(b)(1), for which a section 645 election will be made, need not obtain a TIN. See § 301.6109–1(a)(4) of this chapter and § 1.645–1(d)(1)(ii)(A).

(3) *Special rules*—(i) *Trusts reporting pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death.* The due date for filing of a return pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death shall be the due date provided for under § 1.6072–1(a)(2). The return filed under this paragraph for a trust all of which was treated as owned by the decedent must indicate that it is a final return.

(ii) *Trust reporting pursuant to paragraph (b)(2)(B) of this section for the taxable year of the decedent's death.* A trust that reports pursuant to paragraph (b)(2)(B) of this section for the taxable year ending with the decedent's death must indicate on each Form 1096 (Annual Summary and Transmittal of the U.S. Information Returns) that it files (or appropriately on magnetic media) for the taxable year ending with the death of the decedent that it is the final return of the trust.

(iii) *Trust reporting under paragraph (b)(3) of this section.* If a trust has been filing under paragraph (b)(3) of this section, the trustee may not report under that paragraph if any portion of the trust has a short taxable year by reason of the death of the decedent and the portion treated as owned by the decedent does not terminate on the death of the decedent.

* * * * *

(4) *Effective date.* This paragraph (h) applies on or after the date final regulations are published in the **Federal Register**.

Par. 6. Section 1.6072–1 is amended as follows:

1. The text of paragraph (a) is redesignated as paragraph (a)(1) and a paragraph heading is added for newly designated paragraph (a)(1).

2. Paragraph (a)(2) is added.

The additions are as follows:

§ 1.6072–1 Time for filing returns of individuals, estates, and trusts.

(a) *In general*—(1) *Returns of income for individuals, estates and trusts.** * *

(2) *Return of trust, or portion of a trust, treated as owned by a decedent*—(i) *In general.* In the case of a return of a trust, or portion of a trust, that was treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the decedent's date of death that is filed in accordance with § 1.671–4(a) for the fractional part of the year ending with the date of death of the decedent, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year.

(ii) *Effective date.* This paragraph (a)(2) applies on or after the date final regulations are published in the **Federal Register**.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority citation for part 301 continues to read in part as follows:

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

Par. 8. Section 301.6109–1 is amended as follows:

1. Paragraph (a)(2)(iii) is removed.

2. Paragraphs (a)(3) through (a)(6) are added.

The additions are as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(3) *Obtaining a taxpayer identification number for a trust, or portion of a trust, following the death of the individual*

treated as the owner—(i) *In general*—(A) *A trust all of which was treated as owned by a decedent.* In general, a trust all of which is treated as owned by a decedent under subpart E (section 671 and following), part 1, subchapter J, chapter 1 of the Internal Revenue Code as of the decedent's date of death must obtain a new taxpayer identification number following the death of the decedent if the trust will continue after the death of the decedent. See, however, § 301.6109–1(a)(4) for rules regarding obtaining a taxpayer identification number for a qualified revocable trust, as defined in section 645(b)(1), for which a section 645 election has been or will be made.

(B) *Taxpayer identification numbers of trust with multiple owners.* With respect to a portion of a trust treated as owned under subpart E (section 671 and following), part 1, subchapter J, chapter 1 of the Internal Revenue Code by a decedent as of the date of the decedent's death, if, following the death of the decedent, the portion treated as owned by the decedent remains part of the original trust and the other portion (or portions) of the trust continue to report under the taxpayer identification number assigned to the trust prior to the decedent's death, the portion of the trust treated as owned by the decedent prior to the decedent's death continues to report under the taxpayer identification number used for reporting by the other portion (or portions) of the trust.

(ii) *Furnishing correct taxpayer identification number to payors following the death of the decedent.* If the trust continues after the death of the decedent and is required to obtain a new taxpayer identification number under paragraph (a)(3)(i)(A) of this section, the trustee must furnish payors with a new Form W–9, or an acceptable substitute Form W–9, containing the new taxpayer identification number required under paragraph (a)(3)(i)(A) of this section, the name of the trust, and the address of the trustee.

(4) *Taxpayer identification numbers if a section 645 election has been, or will be, made*—(i) *Definitions.* For purposes of this paragraph (a)(4), the terms *qualified revocable trust* (QRT), *electing trust, related estate, election period,* and *personal representative* shall have the meanings provided in § 1.645–1(b) of this chapter.

(ii) *Taxpayer identification number to be used during the election period*—(A) *If there is a personal representative*—(*1*) *In general.* If there is a personal representative for a related estate, a taxpayer identification number does not need to be obtained for an electing trust. The personal representative of the related estate must obtain a taxpayer identification number in the name of the estate. A trustee of a QRT for which a section 645 election will be made and the personal representative of the related estate, if any, may choose to treat the QRT as an electing trust and not obtain a taxpayer identification number for the trust. See § 1.645–1(d)(1)(ii)(A) of this chapter. If the personal representative knows that a section 645 election has been made for an electing trust or will be made for a QRT at the time the personal representative files the Form SS–4, ''Application for Employer Identification Number,'' for the related estate, the personal representative may enter the name of the trust as a secondary name on the form. All returns filed for the combined related estate and electing trust during the election period must be filed using the name of the related estate as the primary name on the return.

(*2*) *Obligations of persons who make payments to electing trusts.* Any payor that is required to file an information return with respect to payments of income or proceeds to an electing trust must show the name of the related estate, as the primary name on the return, the name of the electing trust as the secondary name on the return, and the taxpayer identification number of the related estate on the return. Nevertheless, the statement to recipients must be furnished by the payor to the trustee of the trust, rather than the personal representative of the related estate. Under these circumstances, the payor satisfies all information reporting sections that require the payor to show the name and taxpayer identification number of the payee on the information return and to furnish the statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(B) *If there is no personal representative.* If there is no personal representative for a related estate, the trustee of an electing trust must obtain a taxpayer identification number as an estate. The name entered on the Form SS–4 filed by the trustee must be the name of the trust followed by ''filing as an estate under section 645.'' Any returns filed by the electing trust in accordance with section 645 during the election period must be filed under the name required to be entered on the Form SS–4 under this paragraph and under the taxpayer identification number obtained pursuant to this paragraph. A trustee of a QRT for which a section 645 election will be made may choose to treat the QRT as an electing trust and obtain a taxpayer identification number as an estate under this paragraph and not as a trust. See § 1.645–1(d)(1)(ii)(A) of this chapter.

(iii) *Taxpayer identification number to be used by a trust upon termination of the election period.* Upon the termination of the election period, the trustee must obtain a taxpayer identification number in the name of the new trust. If there is no personal representative and the trustee obtained a taxpayer identification number under paragraph (a)(4)(ii)(B) of this section for the trust to file as an estate under section 645, the trustee must obtain a new taxpayer identification number for the new trust. See § 1.645–1(h) of this chapter for rules regarding the treatment of an electing trust upon termination of the election period. The trustee must furnish to all payors of the trust a completed Form W–9 or acceptable substitute Form W–9 signed under penalties of perjury by the trustee providing each payor with the name of the new trust, the TIN required to be used under this paragraph (a)(4)(iii), and the address of the trustee.

(5) *Persons treated as payors.* For purposes of paragraphs (a)(2), (3), and (4) of this section, a *payor* is a person described in §§ 1.671–4(b)(4) and 1.645–1(b)(7) of this chapter.

(6) *Effective date.* Paragraphs (a)(3), (4), and (5) of this section apply on or after the date final regulations are published in the **Federal Register**.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

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

Par. 10. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.645–1	1545–1578
* * * * * * *	

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–31648 Filed 12–15–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC82

Special Regulations, Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to phase out snowmobile use in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and, with some exceptions, in Grand Teton National Park, and to prohibit snowplane use in Grand Teton National Park, by the winter of 2003–2004. We also are proposing interim measures to limit the impacts of snowmobiles before their use is prohibited. This proposal is in conjunction with the Winter Use Management Plan and FEIS written for the three NPS areas and implements provisions of the Record of Decision from that Management Plan. That Record of Decision, overall, will shift oversnow motorized use of the parks from snowmobile use to snowcoach use, to allow continued winter use of the parks while eliminating the impacts on park resources and values from snowmobile use.

DATES: Written comments will be accepted through January 17, 2001.

ADDRESSES: Comments should be addressed to: National Park Service, Ranger Activities Division, 1849 C Street, NW., Room 7408, Washington, DC 20240. Fax: (202) 208–6756. Email: WASO_Regulations@nps.gov.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC 20240. Telephone: (202) 208–4206. Fax: (202) 208–6756. Email: Kym_Hall@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Much of the public use of these three parks in winter is snowmobile use. In the winter of 1999–2000, 76,571 visitor-days of snowmobile use occurred in Yellowstone, representing over 60 percent of all visitors, and 23,399 visitor-days of snowmobile use occurred in the Parkway. Less snowmobile use occurred in Grand Teton, with 1,329 visitor-days of snowmobile use on the Continental Divide Snowmobile Trail that traverses the park and 2,867 visitor-days of snowmobile use on other park trails. On Jackson Lake in Grand Teton, there also were 1,091 visitor-days of the use of snowplanes—ski-mounted motor vehicles, driven across the ice by rear-mounted propellers. In Yellowstone and the Parkway, snowcoaches—larger vehicles, comparable to passenger vans (which often are converted vans)—also operate on routes open to snowmobile use. This motorized, oversnow use of the parks is a relatively recent development, with virtually no such use present in the parks in the 1970s.

In May 1997, the National Park Service was sued in U.S. District Court for the District of Columbia by The Fund for Animals, Biodiversity Legal Foundation, Predator Project, Ecology Center, and five individuals for allegedly failing to comply with the National Park Service's Organic Act (16 U.S.C. 1–4), the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act (ESA), and other federal laws and regulations in connection with winter use in these three contiguous parks. The NPS subsequently settled the suit, in part, by an agreement to prepare a winter use plan for all three parks, based on a comprehensive environmental impact statement (EIS).

Nine cooperating agencies joined the NPS in the preparation of the EIS. They are the U.S. Forest Service; the States of Idaho, Montana, and Wyoming; and the Counties of Gallatin and Park, Montana, Park and Teton, Wyoming, and Fremont, Idaho. To develop the scope of the winter use plan, scoping brochures were mailed to about 6,000 interested parties, 12 public meetings were held in the Greater Yellowstone Area, 4 public meetings were held in other parts of the country, and about 2,000 public comments were considered. In July 1999, the NPS published a draft EIS for public comment. Five public hearings were held in the region, and one in Colorado. About 46,500 public comments were received by the December 1999 deadline.

Separately, in January 1999, the NPS received a petition for rulemaking from the Bluewater Network and some 60 other conservation organizations, requesting that we begin immediate rulemaking to prohibit snowmobile use within the 44 units of the national park system in which it is allowed, including the three parks involved in this rulemaking. That petition prompted an agency review of our policies and practices on snowmobile use in parks. As part of that review, the NPS conducted a survey of parks in which snowmobile use is currently allowed. The survey gathered information from each relevant park on such matters as the basis on which a decision was originally made to allow snowmobile use in that park; how extensive that use is; what is known about the impacts of that use on park resources and values, including the enjoyment of other visitors; and what monitoring, if any, is conducted to determine those impacts. Additionally, the NPS also held a two-day snowmobile ''summit'' in February 2000 at which officials from the Department of the Interior (including the Office of the Solicitor) and the National Park Service (including all but one of the 44 affected parks) reviewed the snowmobile use now occurring in the national park system. We learned through the survey and the snowmobile ''summit'' that much of the snowmobile use that occurs in the national park system is not consistent with management objectives or the protection of park resources and values, and is not in compliance with the requirements of the two executive orders and the NPS general regulations on snowmobile use.

In April 2000, the Department and NPS publicly announced an intention to propose changes in the snowmobile use allowed in parks, including the three parks involved here, to protect park resources and values, to meet management objectives for the parks,

and to come into compliance with the legal requirements applying to that use.

The final EIS (FEIS) for winter use in these three parks was published on October 10, 2000, and notice of its availability was published in the **Federal Register** on October 20, 2000. 65 FR 63,076. A Record of Decision on the winter use plan for the parks was signed on November 22, 2000. These regulations are necessary to implement portions of that decision, which generally emphasizes cleaner, quieter access to the parks using the technologies available today.

Existing Laws and Regulations

Snowmobile use in national parks is subject to the provisions of various laws and regulations, principally the NPS Organic Act, the Clean Air Act, two Executive Orders, and NPS regulations.

NPS Organic Act

Section 1 of the NPS Organic Act (16 USC 1) provides that the NPS:

* * * shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservation * * * by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

This prohibition on impairment is the single most important statutory direction Congress has provided for the management of the national parks.

NPS Directors Order #55 details how the NPS interprets and implements the Organic Act's prohibition on impairment. Key elements include:

An impairment is defined to be an impact on a park's resources and values that harm the integrity of that park's resources and values. The Service may not allow the impairment of park resources and values, unless directly and specifically provided for by statute.

The resources and values to which this standard applies are a park's scenery, natural and historic objects, and wildlife; the natural forces and conditions that create and sustain those resources; and opportunities for public enjoyment of them. Resources and values that are particularly relevant to snowmobile use in these parks include, to the extent present in the parks, natural visibility, natural soundscapes and smells; water and air resources; soils; wilderness qualities; native plants and animals; and opportunities for public enjoyment of the parks' resources and values.

In its decision-making as to whether particular impacts to park resources and values constitute an impairment, the NPS must assure the preservation of the high public value and integrity of the national park system, the national dignity of parks, the superlative environmental quality of parks, and the important role of parks in providing benefit and inspiration for all the people of the United States.

When the NPS determines that an ongoing activity is causing an impairment, the Service must take appropriate action, to the extent possible within the Service's authorities and available resources, to eliminate the impairment.

Clean Air Act

The Clean Air Act includes several provisions relevant to snowmobile use in these national parks. Under the Clean Air Act, federal agencies must ensure that any activities occurring within federal lands do not cause or contribute to a violation of any State or National Ambient Air Quality Standards, set to protect the public from the harmful effects of air pollutants. Yellowstone and Grand Teton are Class I areas under the Prevention of Significant Deterioration program, meaning that they are subject to the strictest limits on the maximum allowable increases of air pollutants; only small increases in particulate matter (PM), nitrogen dioxide and sulfur dioxide are allowable. The Act also requires the prevention of any future impairment and the remedying of any existing visibility impairment in Class I federal areas. By EPA regulation, visibility impairment is defined as any perceptible change in visibility. EPA has published regulations to ensure reasonable progress toward the national visibility goal; in particular, states are required to develop plans to achieve steady and continuing reductions in emissions that contribute to visibility impairment, with the goal of restoring natural visibility by 2060. The Act provides that the NPS has an affirmative responsibility to protect the air quality related values of the parks. EPA has the authority under the Act to establish national standards for emissions of air pollutants from snowmobiles, but has not yet done so. If EPA does establish snowmobile emission standards, past practices indicate that there likely will be a few years before manufacturers are required to have newly-manufactured snowmobiles comply with the emission standards.

Executive Orders

Executive Order 11644 on off-road vehicle use, issued by President Nixon in 1972, provides, among other things, that snowmobile use may be allowed in national parks only if NPS determines that the snowmobile use on those areas and trails will not adversely affect the park's natural, aesthetic, or scenic values. It requires NPS to monitor the effects of authorized snowmobile use in parks. It also requires NPS; on the basis of the information gathered through that monitoring, to close or change the areas and trails open to snowmobile use as necessary to avoid adverse effects on the park's natural, aesthetic, or scenic values.

Executive Order 11989, also on off-road vehicle use, issued by President Carter in 1977, requires NPS, whenever it determines that the use of snowmobiles will cause or is causing considerable adverse effects on the natural resources of a park, to take steps to prevent those effects, including immediately halting that use.

NPS Regulations

NPS general regulations on snowmobile use, 36 CFR 2.18(c), state that:

The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.''

The three parks subject to these proposed regulations have park specific regulations that designate areas and routes open to snowmobile (and snowplane) use.

Impacts to Park Resources and Values

The NPS has determined that the snowmobile use occurring in all three parks, and the snowplane use occurring in Grand Teton, harms the integrity of the resources and values of the parks, and therefore constitutes an impairment. We have also determined that the snowmobile use occurring in all three parks is inconsistent with the requirements of the Clean Air Act, Executive Orders 11644 and 11989, the NPS's general snowmobile regulations, and NPS management objectives for the parks. The types of impacts on which these determinations are based are summarized below.

Natural Soundscapes

The impact of noise from snowmobiles and snowplanes on the natural soundscapes of all three parks is one of the reasons that their current use causes an impairment of the resources and values of the park, which is prohibited by the NPS Organic Act, is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The NPS has drawn on four separate studies of the existing natural background and human-generated sound levels in the parks, as explained in the FEIS.

In open terrain with a quiet background, the sound of a single snowmobile is audible for about 4,120 feet, a group of four snowmobiles for 7,510 feet, and a single snowplane for 7,340 feet. By comparison, an automobile in the same circumstances is audible for 2,330 feet. According to daytime audibility monitoring, in Yellowstone, snowmobile noise can be heard 95 percent of the time by visitors at Old Faithful and 87 percent of the time at the Grand Canyon of the Yellowstone; in the Parkway, 63 percent of the time at Flagg Ranch; and in Grand Teton, snowmobile or snowplane noise can be heard 44 percent of the time at Colter Bay.

Wildlife

The impact on wildlife from snowmobile use is one of the reasons that the use causes an impairment of the resources and values of Yellowstone and in all three parks is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The impact on wildlife from snowmobile use is documented not only in the FEIS but also in a report to the federal interagency Greater Yellowstone Coordinating Committee, Effects of Winter Recreation on Wildlife of the Greater Yellowstone Area: A Literature Review and Assessment (T. Olliff, K. Legg, and B. Kaeding, editors. 1999)

Snowmobile use in the parks takes place during the season when animals are most stressed by high snow depths, extreme cold, and food shortages. Disturbance or harassment of wildlife during this sensitive time can adversely affect individual animals and, in some cases, populations as a whole. One review, cited in the FEIS, of 232 publications on the impacts of recreation on wildlife concluded that recreational users, because of their numbers and sometimes inappropriate behavior, were causing severe impacts because of harassment and the habituation of particular species. In these parks, bison, elk, moose, and deer travel on roadways groomed for snowmobile use, which can lead to collisions with or other disturbance of the wildlife. Wildlife movements are also inhibited by traffic and snow berms created by plowing and grooming operations. Although bison habituate to snowmobiles to some degree, when there was a response to snowmobiles, most often the bison fled from the snowmobiles, with snowmobiles frequently herding them down the packed roadway. One study reported that 60 percent of all bison groups observed traveling on groomed roads had negative reactions to snowmobiles, with most of those reactions including running from the snowmobiles.

Air Quality

The impact on air quality from snowmobile use is one of the reasons that the use causes an impairment of the resources and values of Yellowstone and Grand Teton and in all three parks is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

The effects of snowmobiles on air quality in these parks are documented not only in the FEIS but also in the NPS report, *Air Quality Concerns Related to Snowmobile Usage in National Parks* (NPS 2000).

Even though snowmobiles are present in Yellowstone for only three months of the year and there are fewer of them than there are of other motor vehicles during the remainder of the year, the snowmobiles contribute more air pollution to the park than do other motor vehicles. The contribution from snowmobiles to total annual hydrocarbon emissions from all mobile sources can range from 68% to 90% at Yellowstone, depending on which emission factors are used to estimate emissions. Similarly, snowmobiles can contribute from 35% to 68% of total carbon monoxide annual emissions.

Air quality monitoring at Yellowstone's West Gate shows carbon monoxide levels approaching, although not exceeding, the standards for carbon monoxide levels, which are expressed in terms of maximum average concentrations over 8-hour and one-hour periods. Monitoring of carbon monoxide levels over shorter periods, during peak snowmobile use, show much higher concentrations. Employees at the entrance station have complained of adverse health effects from emissions from snowmobiles. In addition, monitoring in the wake of a snowmobile indicate that substantial carbon monoxide levels remain in the roadway, where other snowmobilers could be exposed to them. In 1993 and 1994, Yellowstone received over 1,200 complaint letters concerning employee and visitor health and excessive snowmobile pollution.

The Environmental Protection Agency, in comments on the FEIS, has noted that the maximum allowable increase for particulate matter under the Prevention of Significant Deterioration may have already been exceeded at Yellowstone, and that snowmobile emissions may be adding to that exceedance. Modeling suggests that to be the case.

Snowmobiles can cause localized, perceptible decreases in visibility near the West Entrance and Old Faithful in Yellowstone, near Flagg Ranch in the Parkway and, under certain viewing conditions, along heavily used roadway segments in those parks.

Water Quality

The impact on water quality from snowmobile and snowplane use in all three parks is one of the reasons that the use is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

Deposition of airborne pollutants from snowmobiles and snowplanes onto frozen lake surfaces and snowpack can lead to those pollutants entering groundwater and surface water when the snow and ice melts. In Yellowstone, studies have found that concentrations of ammonium, sulfate, benzene and toluene in the snowpack are correlated with the amount of oversnow traffic. Concentrations of ammonium and sulfate at the sites in the snowpacked roadways between West Yellowstone and Old Faithful were greater than those observed at any of the 50 to 60 other snowpack-sampling sites in the Rocky Mountain region. The use of snowmobiles and snowplanes directly on the frozen surface of Jackson Lake is likely causing the direct deposition of pollutants into lake water with ice and snowmelt, with the potential for a moderate to high adverse impact on water quality.

Effects on Other Visitors

The impact on other visitors from snowmobile use in all three parks is one of the reasons that the use causes an impairment of the resources and values of the parks and is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

Winter visitor surveys indicate that the most important factors for visitor enjoyment in the parks are opportunities to view scenery and wildlife, the safe behavior of others, and opportunities to experience clean air

and solitude. As explained elsewhere in this background statement, snowmobiles can cause decreases in visibility and increased air pollution within the parks; disturb the natural presence and behavior of wildlife; interfere with the natural soundscapes of the parks, reducing a sense of solitude; and adversely affect public safety.

Safety Considerations

The impact on public safety from snowmobile use in all three parks is one of the reasons that the use is inconsistent with Executive Orders, NPS regulations, and NPS management objectives.

In the last 10 years, eight fatalities in Yellowstone resulted from snowmobile accidents. In 1994, 44 percent of all park fatalities resulted from snowmobile accidents. During the past five winters, 92 percent of all incidents requiring response from an NPS ranger involved snowmobiles, which account for 61 percent of all winter users. During all of fiscal year 1998, snowmobilers, who represent two percent of all park visitors in the year, were involved in nine percent of Yellowstone's motor vehicle accidents. In Grand Teton, the use of snowmobiles on the groomed surface of the Continental Divide Snowmobile Trail immediately adjacent to highways open to other motor vehicles is a particular safety concern. Similar co-location of that snowmobile trail and an open highway has contributed to automobile-snowmobile collisions outside of the park, with several injuries and one fatality resulting.

NPS Management Objectives

Prohibiting snowmobile use in Yellowstone and the Parkway, and snowplane and most snowmobile use in Grand Teton, and providing instead for greater winter use of the parks by snowcoaches, is consistent with NPS's management objectives for these parks. Doing so would reduce adverse impacts on park resources and values, better provide for public safety, and provide for public enjoyment of the parks in winter.

Snowcoaches have lower impacts on park resources and values than snowmobiles. For example, a single newer snowcoach, capable of carrying eight or more passengers, emits much lower levels of air pollutants and much less noise than a single snowmobile, which carries one or two passengers. Also, snowcoaches, operated by professional, trained drivers operating under NPS concession contracts or permits, are much less likely to be operated in a way that disturbs wildlife than snowmobiles. As a result, expanding the use of snowcoaches and eliminating most use of snowmobiles will make it possible to accommodate large numbers of winter visitors to the parks, while still preserving an enjoyable experience for most visitors and avoiding substantial adverse impacts on park resources.

If the NPS were to continue to allow snowmobiles in the parks (other than on short routes for limited purposes in Grand Teton), it would be necessary to establish very strict limitations on that use to remain consistent with the NPS Organic, the relevant Executive Orders, the NPS general snowmobile regulations, and other applicable requirements. Even with strict user limitations, however, snowmobiles would continue to have substantial adverse impacts on natural soundscapes, wildlife, air quality, the experience of other park visitors, and other park resources and values. The remaining impacts would be substantial enough that it might be necessary to also limit the number of other types of users, at least including snowcoach users, to ensure that overall winter visitor impacts would not unlawfully or unacceptably affect park resources and values. Rather than establishing limitations on both snowmobile and snowcoach users, the NPS prefers to eliminate most snowmobile use in the parks and allow unlimited access to the parks by snowcoach users and other visitors.

Other Legal Requirements

The NPS has been unable to find any evidence that the Service, before now, made the determinations required by Executive Order 11644—that snowmobile use in particular areas and on particular trails in these parks will not adversely affect the park's natural, aesthetic, or scenic values of the parks—before deciding to allow snowmobile use in the parks. Further, until making this proposal for new rules, the NPS has not complied with the requirement of that Executive Order that the Service rescind or amend the designation or areas open to snowmobile use as necessary to avoid adverse effects on the park's natural, aesthetic, or scenic values.

Also, prior to proposing this rule, the NPS has not complied with the requirement of Executive Order 11989 that the Service, whenever it determines that the use of snowmobiles will cause or is causing considerable adverse effects on the natural resources of a park, take steps to prevent those effects, including immediately halting that use.

The special regulation for Grand Teton National Park that designates the Potholes-Baseline Flats area as open to snowmobile use is inconsistent with the requirement in the NPS's general snowmobile regulation that snowmobiles may be allowed only on ''designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons.'' 36 C.F.R. 2.18(c). The Potholes-Baseline Flats area is not open to motor vehicles during other seasons.

The NPS currently allows snowmobile use on the Continental Divide Snowmobile Trail in Grand Teton and the Parkway, although it has not been designated by regulation as a snowmobile route as required by the NPS's general snowmobile regulation.

Description of Proposed Rule

The proposed rule does not include any changes in regulations governing snowmobile and snowplane use for the winter of 2000–2001. By the time this proposed rule will be final, the winter season will be largely over, and there would not be adequate notice to users of any changes for the remainder of the winter. Instead, the NPS will take non-regulatory management actions this winter to reduce the impacts of snowmobile and snowplane use, as described in our Record of Decision on winter use in the parks.

The rule would add the Continental Divide Snowmobile Trail, in both Grand Teton and the Parkway, to the list of designated snowmobile trails, effective through the winter use season of 2002–2003. This trail, in both parks, is now open to snowmobile use, although it is not currently a designated route.

For the winter use season 2001–2002, the rule would establish numerical limits on the numbers of snowmobiles and snowplanes that may enter the parks through designated entrances, or that may use designated areas of the parks. The daily entrance limits proposed for this season are based on the average peak day of snowmobile use by entrance or road segment for snowmobile use figures collected over the last seven years. These limits are intended to prevent increases in use to occur on the busiest peak days of the season, while allowing current use patterns to continue.

Also for the winter of 2001–2002, the proposed rule will repeal the designation of five routes in Yellowstone and one area in Grand Teton that are included in the parks' current special regulations in 36 CFR Part 7, but that are not now actually open to snowmobile use. Those routes have not been open to use for some

time, because of prior park management decisions that are reflected in the respective Superintendent's Compendium of park rules. The currently closed area in Grand Teton, the Pothole-Baseline Flats area, is an area not open to other motor vehicles in other seasons, so its designation is also inconsistent with the general NPS snowmobile regulation establishing criteria for routes eligible to be designated for snowmobile use.

For the winter of 2002–2003, for Grand Teton the rule would prohibit snowmobile and snowplane use on Jackson Lake in Grand Teton National Park and repeal the designations of all snowmobile trails in the park except for the Continental Divide Snowmobile Trail. For all three parks, the rule would establish numerical limits on snowmobile use in the parks. The limits have been chosen to lead to an approximate 50 percent reduction in snowmobiles entering Yellowstone's West and South Gates, where snowmobile use, and the impacts from that use, are greatest. The limits for this winter will require less change, if any, in other areas, where the snowmobile use and the impacts from it are lesser. Snowmobiles in Yellowstone would be limited to groups, and each group would have to be guided by an NPS-permitted guide, to reduce impacts on park resources and values (particularly wildlife) and to improve public safety. The rule would authorize the Superintendent to require snowmobiles to travel in groups, and to be guided by an NPS permitted guide in Grand Teton and the Parkway.

The following table summarizes current snowmobile use levels and the limits on that use to be established for the winters of 2001–2002 and 2002–2003.

TABLE 1.—LIMITS ON SNOWMOBILES IN YELLOWSTONE (YNP), ROCKEFELLER PARKWAY (JDRMP) AND GRAND TETON (GTNP)

Road segments	7-year average daily use	2001–2002 Daily limits	2002–2003 Daily limits
YNP North Entrance	41	60	60
YNP West Entrance	555	1030	278
YNP East Entrance	37	100	65
YNP South Entrance to JDRMP Flagg Ranch	176	330	90
JDRMP Grassy Lake Road	25	40	25
JDRMP CDST from Flagg Ranch to GTNP eastern park boundary	25	70	25
GTNP Jackson Lake	30	30	0
GTNP Tenton Park Road	11	20	0
GTNP Moose-Wilson Road	3	10	0

Effective the winter of 2003–2004, snowmobile use would be prohibited in Yellowstone, the Parkway, and in most areas of Grand Teton. Oversnow motorized access to the parks in this winter, and thereafter, will be by snowcoaches. Exceptions to the snowmobile prohibition will be certain relatively short routes in Grand Teton that provide snowmobile access to national forest areas open to snowmobile use under U.S. Forest Service management decisions, and to private property for which snowmobile access is the only reasonable, or an appropriate, means of access in winter. Access to these public lands and to private property within and adjacent to the park boundary are provided for in the enabling legislation for Grand Teton National Park. Snowmobile use on these routes would be limited to travel to the national forest areas and the private properties. For the routes to private properties, only the owners and their representatives or guests will be permitted to use those routes and only for access purposes, not recreational uses.

For all three parks, the rule includes several provisions that are intended to ensure safe and appropriate use of snowmobiles. These are mostly drawn from the Superintendent's Compendium of park rules for one or more of the parks. These provisions include prohibitions on excessive idling of snowmobiles, requirements that snowmobiles stopped on a designated route to be pulled over to the edge of the roadway, requirements that operators have valid motor vehicle operator or learner permits, and requirements that snowmobiles be properly registered and registration tags be appropriately displayed. The hours of snowmobile use will be restricted to avoid snowmobile operations during the early morning and late evening hours to mitigate safety concerns, to reduce conflicts with plowing or grooming operations, and to minimize the disturbance to wildlife.

Throughout the regulation there are references to designated routes being marked. It is important to note that because of the natural scenery in the park, the erection of signs will be kept to a minimum. Instead, the use of snow poles or other less intrusive markers will be used to help designate appropriate routes for snowmobile or snowcoach use. Additionally, the berms—large snow banks on the sides of the roads created by plowing or grooming—will also serve to designate the boundaries for snowmobile routes.

The proposed regulation will eliminate the impairment of park resources and values in Grand Teton by the winter of 2002–2003, and in Yellowstone and the Parkway by the winter of 2003–2004.

The NPS has determined, based on the FEIS and other studies and information, that the snowcoach use that we expect to occur in these parks, and the snowmobile use that will continue be allowed in Grand Teton in the winter of 2003–2004 and thereafter, will be consistent with the requirements of the NPS Organic Act, the relevant Executive Orders, and the NPS general regulations on snowmobile use.

We solicit comments on, first, any additional mitigation measures, beyond those identified in the FEIS and Record of Decision, that could be undertaken in conjunction with the proposed regulation to reduce the possible adverse economic impacts of it on small businesses. Second, we also solicit comments on any alternative approach to the proposed regulation—such as a limitation on the number of snowmobiles that may use a park in a day, a restriction on the distance any snowmobile may travel within a park in a day, a limitation on the hours of use of such snowmobiles, a restriction on use of snowmobiles to certain authorized routes, technical or mechanical changes to snowmobiles (*e.g.*, better mufflers) that would be required to enable their use in the parks, or use fees or other market-based

regulatory mechanisms—that could both accomplish the objectives and fulfill the requirements of the laws, executive orders, and regulations applying to snowmobile use in these parks and minimize any possible adverse economic impact of the proposed regulation on small businesses. Finally, we solicit comments on whether the schedule of changes in the proposed regulation should be changed, either (1) to implement one year sooner, in the winter of 2002–2003, the regulations identified in the proposal as taking effect in the winter of 2003–2004, thereby eliminating the impacts from snowmobile use sooner; or (2) to implement those regulations one year later, in the winter of 2004–2005, thereby reducing any possible adverse economic impact on small businesses.

Compliance with Other Laws

Regulatory Planning and Review

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

(1)This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

From the Final Environmental Impact Statement (FEIS), estimated economic output and employment impacts of implementing actions under this rule are: In the five-county, greater Yellowstone area, an estimated loss of 14.4 to 19.2 million dollars; in the three-state area surrounding the parks, a variance of a possible 17.7 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from current summer visitors to the park under this management option could substantially offset the estimated losses and employment reductions from current winter visitors.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementing actions under this rule will not interfere with wither agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only address the recreational use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues.

The issue of the prohibition of snowmobile use has generated local as well as national interest on the subject in the greater Yellowstone area. Subsequently, tens of thousands of public comments have been received and analyzed in the development of the supporting FEIS and Winter Use Management Plan.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Though the ultimate prohibition of recreational snowmobiles use in these three parks in this rule may initially cause a loss of income to local communities around the parks, the NPS is undertaking several significant steps to mitigate the economic impacts.

First, elimination of snowmobiles from most of the areas in the three parks will be phased over four winter seasons. The gradual elimination of this type of recreational activity will allow a significant period of time for the small businesses in surrounding communities to adjust their mode of serving park visitors. An abrupt prohibition on snowmobiles from the three parks would have had a much more significant adverse effect on small businesses in these communities.

Second, while snowmobile use in these parks will be curtailed, access will be provided by multi-passenger snowcoaches and the parks will remain open in winter to serve visitors. With elimination of the impacts of snowmobiles and replacement with snowcoaches, the winter capacity of the parks to accommodate visitors will actually increase, providing the potential for economic expansion in surrounding communities.

Third, during the third winter of the phase-out schedule, snowmobile use in Yellowstone National Park will require group travel with a certified and trained commercial guide. This guided trip requirement will offer an additional employment opportunity for private individuals and small businesses in the surrounding communities.

Fourth, snowcoach access to the parks will require a concession permit from the NPS. These permits will be awarded to numerous small businesses in the surrounding communities. To make this initial business opportunity a smooth transition, NPS has authority to offer temporary commercial use permits for up to three years without regard to competition or numerical limitations (except for keeping the total number of permits below a level that would cause adverse impacts to park resources). NPS will utilize its discretion under this authority to support existing businesses in the surrounding communities during this initial period of years. As a consequence, these existing businesses will experience a shift in their business activity, not elimination of it.

Finally, NPS recognizes that significant changes in visitor use patterns often cause confusion and misinformation among the general public and potential visitors. Therefore, NPS will join with the affected states' travel and tourism offices and their counterparts in the five surrounding counties, as well as the various destination marketing organizations and the state and national levels, to market winter visitation to Yellowstone and Grand Teton without snowmobiles. NPS has committed $100,000 of its FY 2001 funding for this purpose.

We solicit comments on the potential impacts that this rule may have on small entities. We welcome comments with information regarding the number and type of entities impacted, the specific costs that may be imposed by this rule on small entities, and whether and why these impacts may be considered significant.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. From the FEIS, estimated economic loss and employment impacts of implementing actions under this rule are: In the five-county, greater Yellowstone area, an estimated loss of 14.4 to 19.2 million dollars; in the three state area surrounding the parks, a possible loss of 17.7 million dollars to a possible increase of 7.0 million dollars. Increased winter visitation from current summer visitors to the park under this management option could substantially offset the estimated loss and employment reductions from current winter visitors.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

The potential loss of revenue from snowmobile users will likely be offset by visitors using mass transit methods

of visiting the park. Additionally, the summer visitation to the region would continue to exist and wouldn't likely cause the local business to need to raise prices to maintain an income.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rulemaking has no effect on methods of manufacturing or production and specifically effects the Wyoming region, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule addresses public access issues and management of resources within the agency. It imposes no other requirements on other agencies or governments. Mandates only exist if visitors or concessioners desire to operate oversnow vehicles within the park.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to abolish routes designated for snowmobile use in NPS regulations. Private property within the boundaries of those parks will still be afforded access during the winter use season. No other property is affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only addresses a portion of the use within the parks.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB for 83–I is not required.

National Environmental Policy Act

This rule constitutes a major Federal action significantly affecting the quality of the human environment.

An Environmental Impact Statement has been completed and a Record of Decision issued to support that statement. A copy of the EIS is available by contacting the Superintendent of Yellowstone or Grand Teton National Parks.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The chief concerns expressed by the tribes were the affects on wildlife by snowmobiles. This rule serves to address those concerns (to a degree) but has no effect on tribal lands or trusts.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section appears in bold type and is precede by the symbol ''§ '' and a numbered heading; for example § 7.13 Yellowstone National Park [amended].) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the National Park Service, Ranger Activities Division, 1849 C Street, N.W., Washington, DC 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1024–AC82'' in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. 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 organization or businesses, and from individual identifying themselves as representatives or officials of organization or businesses, available for public inspection in their entirety.

Drafting Information

The principle contributors to this proposed rule are Stephen C. Saunders, Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks; T. Destry Jarvis, Senior Advisor to the Assistant Secretary for Fish and Wildlife and Parks; Karen S. Kovacs, Senior Advisor to the Assistant Secretary for Fish and Wildlife and Parks; Michael Tiernan, Attorney-Advisor, Solicitor's Office; Debra Hecox, Attorney-Advisory, Solicitor's Office; Kym A. Hall, NPS Regulations Program Manager; Sarah Creachbaum, Outdoor Recreation Planner, Grand Teton National Park; Bob Rossman, Outdoor Recreation Planner, Grand Teton National Park; and John Sacklin, Supervisory Planner, Yellowstone National Park.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

We propose to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q) 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.13 Yellowstone National Park.

2. Paragraph (l) of § 7.13 is revised to read as follows:

* * * * *

(l)(1) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with the public use limits and operating conditions established in this regulation during the winter use seasons of 2001–2002 and 2002–2003. Effective November 15, 2003, snowmobile use in Yellowstone National Park is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November, through the following year ending in approximately the middle of March. Specific dates are dependent on weather conditions and the availability of NPS facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *When snowmobile use is authorized, where may I operate my snowmobile?* You may operate your snowmobile upon designated routes established within the park. On designated routes, snowmobile use is limited to the unplowed roadway, which is distinguished as that portion of the roadway located between the road shoulders and is designated by snow poles or other poles, ropes, fencing, or signs erected to regulate snowmobile activity. The unplowed roadway may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. Snowmobiles may also be operated in pullouts or parking areas that are groomed or marked similarly to roadways.

(4) *What routes are designated for snowmobile use in the park?* During the winter use seasons of 2001–2002 and 2002–2003, the following routes may be designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii)The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii)The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Any groomed or marked pullouts or parking areas along each of these routes.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris, snowmobile routes to scenic points of interest, lodging, and other facilities will be designated by appropriate snow poles and signs and will be limited to the unplowed roadways in those areas.

(xiii) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(xiv) Maps detailing the designated routes will be available from Park Headquarters.

(5) *What criteria may the Superintendent use to determine the routes within the developed areas mentioned in paragraph (l)(4)(xii)?* The Superintendent may use a variety of criteria to determine use routes within the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek and Norris including the most direct route of access, weather and snow conditions, and those routes necessary to eliminate congestion and improve the circulation of the visitor use patterns in the interest of public safety.

(6) *What limits are established for the numbers of snowmobiles permitted to use the park each day?* (i) For the winter use season of 2001–2002, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
Yellowstone NP	
North entrance	60
West entrance	1030
East entrance	100
South entrance	330

* Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles
Yellowstone NP	
North entrance	60
West entrance	278
East entrance	65
South entrance	90

* Maximum daily allowed per gate.

(7) *May I operate a snowcoach in Yellowstone National Park?* Snowcoaches may be operated in Yellowstone National Park under a Concessions Contract or Permit authorized by the Superintendent. Snowcoach operation is subject to the conditions of the permit and all other conditions identified in this section.

(8) *What is a snowcoach?* A snowcoach is a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers.

(9) *What routes are designated for snowcoach use?* Snowcoaches may operate on the same routes designated for snowmobile use in paragraph (l)(4) of this section and the following designated routes:

(i) Firehold Canyon Drive.
(ii) Fountain Flat Road.
(iii) Virginia Cascades Drive.
(iv) North Canyon Rim Drive.
(v) Riverside Drive.
(vi) Lake Butte Overlook Drive.
(vii) The portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs Overlook.

(10) *What other conditions are placed on snowmobile and snowcoach operations?* Snowmobiles and snowcoaches may be operated in the park under the following conditions:

(i) Snowmobiles and snowcoaches may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

(ii) Idling a snowmobile or snowcoach is limited to 10 minutes at any one time.

(iii) Snowmobiles or snowcoaches that stop on designated routes must pull

over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iv) Snowmobiles and snowcoaches must be properly registered and display a valid state registration sticker.

(v) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times.

(vi) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no further than 100 yards, by a responsible person 21 years of age or older possessing a valid state motor vehicle operator's license.

(vii) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(viii) During the winter use season of 2002–2003, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

(11) *May I operate a snowplane in the park?* No, the operation of snowplanes in Yellowstone National Park is prohibited.

(12) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(13) *Are there any other forms of over-snow transportation allowed in the park?* No other forms of motorized over-snow transportation are permitted for use in the park unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

* * * * *

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

3. Paragraph (a) of § 7.21 is revised to read as follows:

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this regulation during the winter use seasons of 2001–2002 and 2002–2003. Effective November 15, 2003, snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November through the following year ending in approximately the middle of March. Dates are dependent on weather conditions and the availability of NPS facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *What routes are designated for snowmobile use in the Parkway?* During the winter use seasons of 2001–2002 and 2002–2003, the following routes may be designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway to Flagg Ranch.

(ii) Along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(v) Maps detailing the designated routes will be available from Park Headquarters.

(4) *What limits are established for the numbers of snowmobiles permitted to use the Parkway each day?* (i) For the winter use season of 2001–2002, the numbers of snowmobiles allowed to use the Parkway each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
John D. Rockefeller, Jr., Memorial Parkway	
Continental Divide Snowmobile Trail (along U.S. 89/287) from the southern boundary of the Parkway to Flagg Ranch	70
(Along U.S. 89/287) Flagg Ranch to northern boundary of Parkway	330
Grassy Lake Road	40

*Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the Parkway each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
John D. Rockefeller, Jr., Memorial Parkway	
Continental Divide Snowmobile Trail (along U.S. 89/287) from the southern boundary of the JDR Parkway to Flagg Ranch	25
(Along U.S. 89/287) Flagg Ranch to northern boundary of Parkway	90
Grassy Lake Road	25

*Maximum daily allowed per gate.

(5) *May I operate a snowcoach in the Parkway?* Snowcoaches may be operated in the Parkway under a Concessions Contract or Permit authorized by the Superintendent. Snowcoach operation is subject to the conditions of the permit and all other conditions identified in this section.

(6) *What is a snowcoach?* A snowcoach is a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers.

(7) *What routes are designated for snowcoach use?* Snowcoaches may operate on the routes designated for snowmobile use in paragraph (a)(3)(ii) and (iii) of this section.

(8) *What other conditions are placed on snowmobile and snowcoach operations?* Snowmobiles and snowcoaches may be operated under the following conditions:

(i) Snowmobiles or snowcoaches may not be operated in the Parkway between the hours of 9 p.m. and 8 a.m. except by authorization.

(ii) Snowmobiles or snowcoaches that stop on designated routes must pull over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iii) Snowmobiles and snowcoaches must be properly registered and display a valid state registration sticker.

(iv) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times.

(v) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no further than 100 yards, by a responsible person 21 years

of age or older possessing a valid state motor vehicle operator's license.

(vi) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(vii) During the winter use season of 2002–2003, the Superintendent may determine that snowmobiles be required to be accompanied by an NPS permitted guide or to travel in groups of not more than 11 snowmobiles.

(9) *May I operate a snowplane in the Parkway?* No, the operation of snowplanes in the Parkway is prohibited.

(10) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(11) *Are there any other forms of over-snow transportation allowed in the Parkway?* No other forms of motorized over-snow transportation are permitted for use in the Parkway unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

4. Revise paragraph (g) of § 7.22 to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with the public use limits and operating standards established by the Superintendent during the winter use seasons of 2001–2002 and 2002–2003. Effective the winter use season of 2003–2004, snowmobile use will be restricted to the routes and purposes in paragraph (g)(8), (g)(9), (g)(10) and (g)(11) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(2) *What is a winter use season?* A winter use season is that portion of the winter months that begins each year in approximately late November, through the following year ending in approximately the middle of March. Specific dates are dependent on weather conditions and the availability of park facilities and resources and may be adjusted at the discretion of the Superintendent. Appropriate notice will be given to the public of determined start and ending dates each season.

(3) *What routes are designated for snowmobile use in the park?* For the winter use season of 2001–2002, the following routes may be designated for snowmobile use:

(i) Teton Park Road from Taggert Lake Trailhead to Signal Mountain Lodge. Additional side routes open from this route include the Signal Mountain Road to the summit of Signal Mountain, the access road to String and Jenny Lakes and the scenic route to Jenny Lake's east side, and the gravel surface road to Spalding Bay at the south end of Jackson Lake.

(ii) Moose-Wilson Road from the Granite Canyon Trailhead to the JY Ranch entrance.

(iii) The unpaved road paralleling the eastern park boundary from the Shadow Mountain access to Cunningham Cabin, and the access road from U.S. 26/89 near the Snake River Overlook east to the unpaved road.

(iv) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from Moran to the eastern park boundary, and along U.S. 89/287 from Moran to the north boundary of the park including the side route from Jackson Lake Junction to Signal Mountain Lodge.

(v) The frozen surface of Jackson Lake.

(vi) Any groomed or marked pullouts or parking areas along each of these routes.

(vii) The Superintendent may open or close these routes after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety.

(viii) Maps detailing designated routes will be available from Park Headquarters.

For the winter use season of 2002–2003, the following route may be designated for snowmobile use:

(ix) The CDST along U.S. 26/287 from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary.

(4) *What limits are established for the numbers of snowmobiles permitted to use the park each day?* (i) For the winter use season 2001–2002, the numbers of snowmobiles allowed to use the park each day are listed in the tables below.

Park entrance gate or area	Number of snowmobiles*
Grand Teton NP	
Teton Park Road	20
Moose Wilson Road	10
Continental Divide Snowmobile Trail from the east park boundary (along U.S. 26/287) to northern park boundary (along U.S. 89/287)	70
Jackson Lake	30

*Maximum daily allowed per gate.

(ii) For the winter use season 2002–2003, the numbers of snowmobiles allowed to use the park each day are listed in the table below.

Park entrance gate or area	Number of snowmobiles*
Grand Teton NP	
Continental Divide Snowmobile Trail from east park boundary (along U.S. 26/287) to northern park boundary (along U.S. 89/287)	25

*Maximum daily allowed per gate.

(5) *What other conditions are placed on snowmobile operations?* Snowmobiles may be operated in the park under the following conditions:

(i) Snowmobiles may not operate in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

(ii) Snowmobiles that stop on designated routes must pull over to the far right next to the snow berm. Stopping the vehicle in a hazardous location, or where the view of the vehicle might be obscured, such as on a curve, is prohibited. Pullouts must be utilized when available and accessible.

(iii) Snowmobiles must be properly registered and display a valid state registration sticker.

(iv) Snowmobile operators must possess a valid state motor vehicle operator's license or learner's permit. The license or permit must be carried on the operator's person at all times. Snowmobile operators are not required to possess a valid drivers license while operating on the public access routes designated in paragraph (g)(8) and the private property access routes designated in paragraph (g)(10) of this section.

(v) Persons operating a snowmobile while possessing a learner's permit must be accompanied and supervised within line of sight, but no farther than 100 yards, by a responsible person 21 years of age or older possessing a valid state motor vehicles operator's license.

(vi) Allowing or permitting an unlicensed driver to operate a snowmobile is prohibited.

(vii) During the winter use season of 2002–2003, the Superintendent may require that snowmobiles be accompanied by an NPS permitted guide and must travel in groups of not more than 11 snowmobiles.

(6) *May I operate a snowplane in the park?* If you had a permit to operate snowplane on Jackson Lake during the winter use season 2000–2001, you may obtain a permit to operate a snowplane on Jackson Lake during the winter use

season of 2001–2002. Beginning the winter use season 2002–2003, snowplane use in Grand Teton National Park is prohibited.

(7) *What is a snowplane?* A snowplane is a self-propelled vehicle intended for over-the-snow travel and driven by a pusher-propeller.

(8) *May I continue to access public lands via snowmobile through the park?* Yes, reasonable and direct access via snowmobile to adjacent public lands will continue to be permitted on designated routes through Grand Teton National Park. The following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) From the Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the east park boundary.

(9) *For what purpose may I use the routes designated in paragraph (g)(8)?* You may use those routes designated in paragraph (g)(8) of this section to gain direct access to public lands adjacent to the park boundary.

(10) *May I continue to access private property within or adjacent to the park via snowmobile?* Yes, reasonable and direct access via snowmobile to private property will continue to be permitted via designated routes in Grand Teton National Park. The following routes are designated for access to private property within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to that piece of land commonly referred to as the ''Clark Property''.

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property'' until the Department of the Interior takes full possession of that land.

(iv) From the Moose-Wilson Road to the land commonly referred to as the ''Wittimer Property'' until the Department of the Interior takes full possession of that land.

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the ''Halpin Properties''.

(vi) From either end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the ''JY Ranch''.

(vii) From Highway 26/89/187 to those lands commonly referred to as the ''Meadows'', the ''Circle EW Ranch'', the ''Moulton Property'', the ''Levinson Property'' and the ''West Property''.

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X the piece of land commonly referred to as the ''Lost Creek Ranch''.

(ix) Maps detailing designated routes will be available from Park Headquarters.

(11) *For what purpose may I use the routes designated in paragraph (g)(10)?* Those routes designated in paragraph (g)(10) of this section are to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowner or their representatives or guests. Recreational use of these roads by anyone is prohibited.

(12) *Are there any forms of over-snow transportation allowed in the park?* No other forms of motorized over-snow transportation are permitted for use in the park unless specifically approved by the Superintendent and are consistent with the requirements of the Winter Use Plan and the applicable Executive Orders.

Dated: December 13, 2000.

Stephen C. Saunders,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 00–32144 Filed 12–15–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–47;GA–52; GA–55–200030; FRL–6914–8]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a December 16, 1999, **Federal Register** document, EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration) which was submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. In a letter dated November 23, 1999, the GAEPD agreed to meet the following commitments: To submit rules requiring the implementation of nitrogen oxide (NO_X) and volatile organic compound (VOC) reasonably available control technology (RACT) in the 32 additional counties for sources with emissions in excess of 100 tons per year; to complete an early assessment of attainment prior to 2003; to identify and adopt regulations for sources that will be controlled to achieve the additional emission reductions that are needed for attainment as determined by EPA's Method 1. These revisions address those commitments. EPA is proposing in this document to approve these revisions. Final action on these rule revisions will occur at the same time, or prior to, final action on the 1-hour ozone attainment demonstration for the Atlanta nonattainment area.

DATES: Written comments must be received on or before January 17, 2001.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin at (404) 562–9036. martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration) which was submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. In a letter dated November 23, 1999, the GAEPD agreed to meet the following commitments: to submit rules requiring

the implementation of nitrogen oxide (NO_X) and volatile organic compound (VOC) reasonably available control technology (RACT) in the 32 additional counties for sources with emissions in excess of 100 tons per year; to complete an early assessment of attainment prior to 2003; to identify and adopt regulations for sources that will be controlled to achieve the additional emission reductions that are needed for attainment as determined by EPA's Method 1. These revisions address those commitments as well as comment received on the regulations. EPA is proposing in this document to approve these revisions.

II. Analysis of State's Submittal

The Clean Air Act as amended in 1990, (CAA) requires that serious ozone nonattainment areas perform photochemical grid modeling to help determine the level of emission reductions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) necessary to attain the 1-hour ozone standard. The GAEPD fulfilled this requirement primarily through the application of the Urban Airshed Model, Variable Grid Version (UAM–V). When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the ozone standard is likely. The process by which this is done is called a weight of evidence (WOE) determination. For a more detailed discussion of UAM–V modeling and WOE, please reference the December 16, 1999, **Federal Register** (64 FR 70478).

The GAEPD relied on WOE to demonstrate attainment of the 1-hour ozone standard. GAEPD used EPA's Method 1 technique to identify the additional percentage reduction in NO_X and VOC, from the 1996 emissions, needed for attainment. A detailed discussion of the steps used in Method 1 to calculate the additional emission reductions needed for attainment is provided in the technical support document (TSD) which can be obtained from the Regional Office contact. GAEPD's application of this procedure estimates that additional reductions of 3.94 percent (35.75 tpd) NO_X and 3.59 percent (20.81 tpd) VOC are needed for attainment. Per EPA guidance, the State has flexibility to substitute NO_X reductions for VOC and VOC for NO_X. Adequate supporting documentation for the basis of any substitution must be submitted to EPA along with the adopted regulations. The following table summarizes the reductions including the emission reduction changes from rules included in the October 28, 1999, submittal which will be used to achieve the shortfall. A detailed discussion of each measure follows the table.

Required NO_X Reductions	Total of 35.75 tpd
Industrial Open Burning Ban	−0.24
Commercial Open Burning Ban.	−0.19
Residential Open Burning Ban.	−3.66
Slash Burning Ban	−3.66
Additional Electrical Generating Unit Controls.	−44.06
Relieve New Source Review in 26 Counties.	+1.73
Relieve RACT in 26 Counties	+10.98
Delay RACT in 6 Counties ...	+0.81
New Combustion Turbine Rule.	−3.1
Extra NO_X Reductions Beyond Those Required.	5.64
Required VOC Reductions ...	20.81
Industrial Open Burning Ban	−0.91
Commercial Open Burning Ban.	−0.96
Residential Open Burning Ban.	−18.48
Slash Burning Ban	−17.55
Prescribed Burning Ban	−3.5
Relieve New Source Review in 26 Counties.	+0.2
Delay RACT in 6 Counties ...	+3.69
Relieve RACT in 26 Counties	+10.66
Extra VOC Reductions Beyond Those Required.	6.04

Description of Major Revisions to Rules for Air Quality Submitted on January 31, 2000

The January 31, 2000, submittal included several regulations that will reduce emissions of NO_X and VOC in the Atlanta modeling domain. EPA is proposing to approve the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

The October 28, 1999, submittal expanded the coverage of several rules outside the 13 county nonattainment area to an additional 32 counties for a total of 45 counties. After receiving adverse comment from many of the counties affected by the expansion, the EPD agreed to revise the rules to reduce the economic hardship imposed on the smaller and more rural counties. The following 26 counties shall no longer be subject to the requirements of the rules listed below: Banks, Barrow, Butts, Chattooga, Clarke, Dawson, Floyd, Gordon, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pickens, Pike, Polk, Putnam, Troup and Upson. 391–3–1–.02(2)(tt) VOC Emissions from Major Sources, (vv) Volatile Organic Liquid Handling and Storage, (yy) Emissions of Nitrogen Oxides from Major Sources, (ccc) VOC Emissions from Bulk Mixing Tanks, (ddd) VOC Emissions from Offset Lithography, (eee) VOC Emissions from Expanded Polystyrene Products Manufacturing, (hhh) Wood Furniture Finishing and Cleaning Operations and 391–3–1–.03(8)(c)(14) Additional Provisions for Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area. In addition to the 13 counties in the Atlanta 1-hour ozone nonattainment area, Bartow, Carroll, Hall, Newton, Spalding, and Walton counties shall be subject to the rules listed above.

Rule 391–3–1–.02(2)(jjj) relating to ''NO_X Emissions from Electric Utility Steam Generating Units'' is being amended to expand the coverage of the rule to include affected coal-fired electric utility steam generating units in the counties of Monroe and Putnam and to include a lower average NO_X emissions limit for all affected units.

Effective May 1, 2003, the NO_X emissions from all affected units at Plants Bowen (Bartow County), Hammond (Floyd County), McDonough (Cobb County), Wansley (Heard County), and Yates (Coweta County) will be limited to the equivalent of 0.13 lb/million BTU five plant average. An overlapping requirement, also effective May 1, 2003, limits NO_X emissions from all the same units described above plus the units at Plants Branch (Putnam County) and Scherer (Monroe County) to the equivalent of 0.20 lb/million BTU seven plant average. Compliance will be determined potentially in two steps. First, each source will be assigned a specific alternative emission limit. If the actual emission rate from each source is less than its alternative limit, then all affected sources would be in compliance. If the actual emission rate from any source is greater than its alternative limit, then compliance would be demonstrated by showing that

the actual BTU-weighted average emission rate for all affected sources is less than 0.13 lb/million BTU for the 5 plants and 0.20 lb/million BTU for the 7 plants listed above. Compliance with the alternative emission limits would be determined such that their BTU-weighted average does not exceed the 0.13 and 0.20 lb/million BTU limits. The compliance period will be based on a 30-day rolling average beginning May 1 and ending September 30 of each year.

Rule 391–3–1–.02(2)(kkk) relating to ''VOC Emissions from Aerospace Manufacturing and Rework Facilities'' is being amended by adding compliance dates. Compliance dates have been added which give affected sources located outside of the Atlanta 1-hour ozone nonattainment area until January 1, 2001, to comply with the rule.

Rule 391–3–1–.02(2)(mmm) relating to '' NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity'' is being amended to remove an exemption from the rule. The exemption, ''Stationary engines used exclusively in the handling and distribution of natural gas,'' is being removed. Stationary engines used to pump, compress, or liquefy natural gas are still exempt under another exemption which exempts engines not connected to an electrical generator. Therefore, the removal of the exemption makes engines used to generate electricity at natural gas pumping, compression, or liquefaction plants subject to the rule consistent with other industries.

Rule 391–3–1–.03(8)(c)(15) relating to ''Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area'' is being added. ''Electrical generating unit'' is defined as a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that serves a generator which produces electricity for sale. Any new electrical generating unit located at a ''major source'' (which is defined as any source which has the potential to emit at least 100 tons per year NO_X) or any physical change or change in the method of operation of an existing electrical generating unit located at an existing major source which results in a net increase of 40 tons or more NO_X is subject to additional permitting requirements. This rule is applicable to electrical generating units at major sources located in 26 counties surrounding the 13 county Atlanta nonattainment area and the six counties subject to Rule 391–3–1–.03(8)(c)(14). Sources subject to this rule are required to use best achievable control technology (BACT) to control emissions and are required to obtain emission offsets at a ratio of 1.1 to 1. Sources located in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton (32 county area) shall be subject to this rule.

Rule 391–3–1–.03(13) relating to ''Emission Reduction Credits'' is being amended. The purpose of this rule is to facilitate construction permitting for sources undertaking major modifications or new constructions in federally designated ozone nonattainment areas and areas contributing to ambient concentrations of ozone in nonattainment areas in the state of Georgia. The proposed amendments to this rule revise the eligibility requirements for major sources to make them consistent with corresponding changes that are being proposed for Rule 391–3–1–.03, Section (8); respond to comments received from EPA concerning applicability of its recently issued Economic Incentives Program to the Emission Reductions Credit Program; clarify the provisions for discounting of credits based on time banked; consolidate and move all definitions to the end of the rule; and strike a section referring to provisions of Rule 391–3–1–.03, Section (8).

Description of Major Revisions to Rules for Air Quality Submitted on July 31, 2000

Rule 391–3–1–.01, Definitions, subsection (nnnn) ''Procedure for Testing and Monitoring Sources of Air Pollutants'' is amended to reference a revised version of the Procedures for Testing and Monitoring Sources of Air Pollutants (''PTM'') effective April 1, 2000, which includes changes to specific test methods and procedures and to include a new section describing compliance procedures and monitoring requirements for a new emission standard for large combustion turbines. These revisions have been reviewed and meet applicable requirements.

Rule 391–3–1–.02(2)(lll) relating to ''NO_X Emissions from Fuel-Burning Equipment'' is being amended to exempt fuel burning equipment brought on site by May 1, 1999, but which had not been installed or obtained an air quality permit under 391–3–1–.03(1) by May 1, 1999 and to provide an exemption for duct burners associated with combined cycle gas turbine systems. The original rule exempted existing boilers in their current locations because the cost of retrofitting existing boilers to comply with this rule was determined to be prohibitive. The rule was amended in January 2000, with an effective date of February 16, 2000, to exempt fuel burning equipment which had been permitted by May 1, 1999, even if the equipment was not yet installed and operational by that date. The intent was to grandfather such units because the permittee was likely to have contracted for a new boiler that could have not complied with the emission limit and incurred unrecoverable expense. Likewise, the intent in proposing this second amendment is to grandfather fuel burning equipment which had been purchased and brought on site, but which had not been installed nor made application sufficiently in time to obtain a permit by May 1, 1999. Another exemption is being added for duct burners associated with combined cycle gas turbine systems. These emission units will be subject to more stringent NO_X limits under Georgia Rule 391–3–1–.02(2)(nnn) or Georgia Rule 391–3–1–.03(8)(c) as part of the overall combined cycle system.

Rule 391–3–1–.02(2)(nnn) relating to ''NO_X Emissions from Large Stationary Gas Turbines'' is being amended. This rule will regulate NO_X emissions from new and existing stationary gas turbines greater than 25MW that are located in a 45 county area in and around Atlanta (i.e., the 13 county nonattainment area and the 32 county area adjacent to the nonattainment area). NO_X emissions from affected stationary gas turbines permitted before April 1, 2000 will be limited to not more than 30 parts per million (or 50 parts per million for the oil-fired unit) at 15 percent oxygen with a compliance date of May 1, 2003. NO_X emissions from affected stationary gas turbines permitted on or after April 1, 2000, will be limited to not more than 6 parts per million at 15 percent oxygen with a compliance requirement upon startup. The limits in this rule will apply during the period May 1 through September 30 of each year. New units subject to a NO_X limit under 391–3–1–.03(8)(c)14. or 15. would be exempt from this rule. For existing units, a provision was included in the rule allowing the owner/operator to petition the Director for a revision to the rule in case a source is unable to meet the 30 parts per million (or 50 parts per million for the oil-fired unit) through combustion modifications. A SIP submittal to EPA would be required to revise the rule.

Rule 391–3–1–.02(5) relating to ''Open Burning'' is being amended. The

coverage of the rule is being expanded beyond the existing 13 county Atlanta 1-hour ozone nonattainment area to include the additional 32 county area. Subparagraph (a) is amended to add a ''prescribed burning'' and a ''slash burning'' exemption to the rule. Subparagraph (b) is reorganized to add clarity to the rule and is amended to add county specific restrictions for the six counties of Bartow, Carroll, Hall, Newton, Spalding, and Walton as well as the remaining 26 counties of the 32 county area. The six counties listed above will have the same restrictions as those in the Atlanta nonattainment area. The twenty-six remaining counties of the 32 county area will have the same restrictions as those in the Atlanta nonattainment area with the exception that ''prescribed burning'' is allowed in the twenty-six counties. Subparagraph (f) is added to include the definitions for ''Prescribed Burning'' and ''Slash Burning.''

Rule 391–3–1–.03(6)(h)3 relating to ''SIP Permit Exemptions for Industrial Operations'' is being amended. A new exemption from permitting for small feed mill or grain mill ovens and for surface coating drying ovens is being added.

Rule 391–3–1–.03(8) Permit Requirements is being amended. Provisions for internal offsets at a ratio of 1.3 to 1 to avoid New Source Review permitting requirements are being restored in paragraphs (c)(13)(iii) and (iv). These provisions will allow existing sources located within the Atlanta 1-hour ozone nonattainment area to avoid becoming subject to federal New Source Review permitting requirements by offsetting emission increases associated with modifications at a 1.3 to 1.0 ratio. See CAA section 182(c)8 Special Rule for Modifications of Sources Emitting Greater than 100 tons per year.

Rule 391–3–1–.03(11) relating to ''Permit by Rule'' is being amended. A typographical error in the citation of federal operating permit regulations is being corrected. The reference to 40 CFR 70.5(6)(f) is being replaced with the correct reference to 40 CFR 70.6(f).

III. Proposed Action

EPA is proposing to approve the revisions to Atlanta attainment demonstration as discussed above because they meet EPA and CAA requirements and provide reductions to meet the additional reductions identified as needed to support the attainment demonstration.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. 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. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 16, 2000.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 00–32151 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0031; FRL–6918–5]

Disapproval of Implementation Plans, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) concerning visible emission sources. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 17, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule proposed for disapproval with the date that it was adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule/Title	Adopted	Submitted
ADEQ	R18–2–702	General Provisions	11/13/93	07/15/98

On December 18, 1998, we determined that the rule submittal in Table 1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule R18–2–702 into the ADEQ portion of the Arizona SIP, as Rule R9–3–501, Visible Emissions: General, on April 23, 1982 (47 FR 17485).

C. What Are the Changes in the Submitted Rule?

- The rule was changed to apply only to existing sources.
- The opacity method was changed to EPA Method 9 to simplify EPA enforcement.
- An expired and therefore outdated exemption for certain copper smelters was removed.
- A procedure for calculating process weight rate was added to the rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

We evaluated this rule for enforceability and consistency with the CAA as amended in 1990, with 40 CFR 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The area regulated by the rule contains five counties that are PM–10 moderate nonattainment areas: Cochise County, Santa Cruz County, Gila County, Mohave County, and Yuma County. Therefore, the rule must meet the requirements of RACM/RACT. While the rule does not specifically establish PM–10 limits for a process, an opacity standard limits PM–10 emissions. We believe that a general 20% opacity standard is an important control level for PM–10 achievable with reasonably available control technology.

The guidance and policy documents that we used to define specific enforceability and SIP relaxation requirements includes the following:

- PM–10 Guideline Document, (EPA–452/R093–008).

B. Does the Rule Meet the Evaluation Criteria?

Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

ADEQ Rule R18–2–702 contains the following deficiencies:

- The change of scope to apply only to existing sources without a replacement for new sources is a SIP relaxation. The opacity determination is an enforcement tool for both existing and new sources.
- The 40% opacity standard does not meet the requirements of RACM/RACT. A 20% opacity standard has been determined to be reasonably available across the country.
- The enforceability is limited by the discretion of the Director to relax the opacity standard if the source complies with the associated mass standard for the source. Relaxing the opacity standard below the RACM/RACT level does not meet the requirements of RACM/RACT.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect our current action but are recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a disapproval of the submitted PCAQCD Rule R18–2–702. If finalized, this action would retain the existing SIP rule in the SIP, including the 40% opacity limit which does not fulfill RACM/RACT. If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c).

We will accept comments from the public for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists

some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(A) and (B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a) and 189(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 186(a)(1) and 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

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

Dated: November 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–32149 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–01–043–6991b; A–1–FRL–6918–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance program. The intended effect of this action is to reduce motor vehicle emissions through identification of high emitting vehicles and require repair of these high emitters. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before January 17, 2001.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, One Congress Street, 11th floor, Boston, MA and Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. What action is EPA proposing today?
II. How can EPA propose approval of a draft plan?
III. What Rhode Island SIP revision is the topic of this action?
IV. What are the major items included in this state submittal?
V. What are the EPA requirements for approval of the Rhode Island inspection and maintenance program and how has the state addressed each?
VI. What emission reduction credit may Rhode Island assume in the interim until the EPA has information available to assign appropriate credit?
VII. What is EPA's proposed action on this submittal?
VIII. How can the public participate in this process?
IX. Administrative Requirements

I. What Action Is EPA Proposing Today?

We are proposing approval of the Rhode Island enhanced motor vehicle inspection and maintenance program SIP revision which was submitted in draft form on November 17, 2000.

II. How Can EPA Propose Approval of a Draft Plan?

EPA can propose approval of a SIP revision through a process called parallel processing. This process allows EPA to propose approval of a state SIP at the same time that the state is having its required public comment period. The public has the opportunity to review the State's proposed program, plus EPA's discussion in this notice of the non-regulatory program commitments Rhode Island must submit, for the purposes of commenting on this proposed SIP revision. If there are no substantive changes as a result of the state public hearing process, and if there are no substantive adverse comments in response to this notice that cause EPA to require changes in the program beyond the additions already discussed in this notice, EPA can go forward with a final rulemaking notice. If substantive changes are made or substantive adverse comments received that require a program change then EPA must repropose the revision for public comment.

III. What Rhode Island SIP Revision Is the Topic of This Action?

On November 17, 2000, Rhode Island Department of Environmental Management (DEM) submitted a draft revision to its SIP for motor vehicle inspection and maintenance. The revision will be the subject of a public hearing in Rhode Island on December 21, 2000. The SIP revision proposes to revise the Rhode Island SIP to add the enhanced motor vehicle inspection and maintenance program which is required by EPA's inspection and maintenance

regulation Title 40, Part 51—Subpart S—Requirements for Preparation, Adoption, and Submittal of Implementation Plans (I/M rule).

This approval will apply to the inspection and maintenance program which is now operating in the state and will not require any changes to the program beyond the non-regulatory program commitments described in the notice. The Rhode Island I/M program is operated statewide at licensed private garages which also perform required safety tests on vehicles. The test performed every two years on most vehicles is a 31 second dynamometer test. The test equipment is computerized and connected to a central computer. Enforcement is by windshield stickers, but will be changed to registration denial in January 2001.

IV. What Are the Major Items Included in This State Submittal?

The revision consists of a narrative description of the program, the Rhode Island Department of Environmental Management and Department of Motor Vehicles regulations, equipment and test specifications, legal authority, emission factor modeling, the vehicle inspection manual, the quality assurance and quality control plan, technician training information, and the technical proposal from Keating Technologies which includes a public awareness plan.

V. What Are the EPA Requirements for Approval of the Rhode Island Inspection and Maintenance Program and How Has the State Addressed Each?

We have reviewed the Rhode Island submittal to determine how it addresses all aspects of the Clean Air Act and EPA's I/M Rule. Below is a summary of how the Rhode Island submittal addresses each section of EPA's I/M rule:

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Clean Air Act and 40 CFR 51.350(a) require all states in the Northeast Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. Rhode Island is part of the OTR and contains the Providence-Pawtucket-Fall River CMSA or parts thereof with a population of 100,000 or more.

Before the EPA finding made on June 9, 1999 (64 FR 30911) that the 1-hour ozone standard was no longer applicable, the entire State of Rhode Island was also classified as a serious ozone nonattainment area. As such it was required to implement an enhanced I/M program per section 182(c)(3) of the CAA and 40 CFR 51.350(a)(2). On July 20, 2000 (65 FR 45181), EPA reinstated the applicability of the 1-hour ozone standard in all areas for which EPA had taken action determining that the standard no longer applied. The effective date of the reinstatement for Rhode Island is January 16, 2001, after which Rhode Island will once again be considered a serious ozone nonattainment area and again subject to the section 182(c) requirement to implement an enhanced I/M program.

Under the requirements of the Clean Air Act, all counties in Rhode Island are subject to I/M program requirements. The Rhode Island I/M regulation requires that the enhanced I/M program be implemented statewide. The I/M legislative authority Rhode Island General Law Chapter 31-38, Inspection of Motor Vehicles, and Chapter 31–47.1, Motor Vehicle Emissions Inspection Program, provide the legal authority to establish a statewide enhanced program. This part of the submittal meets the requirements of 40 CFR 51.350 of the federal I/M rule and is part of the basis for this proposed approval of the Rhode Island I/M SIP.

The federal I/M rule requires that the state program not terminate until it is no longer necessary. EPA interprets the federal rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Rhode Island submittal does not address the length of time the program will be in effect. The program must continue past the attainment dates for all applicable nonattainment areas in Rhode Island. In the absence of a sunset date, EPA interprets the SIP submittal as requiring the I/M program to continue indefinitely, and proposes to approve the program on this basis. Once approved, this unlimited term of the program will be federally enforceable as a requirement of the SIP.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard is established using local characteristics, such as vehicle age mix and local fuel controls, and the following model I/M program parameters: Network type, start date, test frequency, model year, vehicle type coverage, exhaust emission test type, emission standards, emission control device inspection, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Rhode Island submittal the most current version was MOBILE5b. Areas shall meet the performance standard in 2002 for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas or areas in the Ozone Transport Region, the performance standard must be met for both nitrogen oxides (NO_X) and hydrocarbons (HC). This Rhode Island submittal must meet the enhanced I/M performance standard for HC and NO_X throughout the state.

The 15 percent rate of progress (ROP) plan for Rhode Island which was approved in the **Federal Register** on December 8, 1998 (63 FR 67594) does not rely on I/M emission credits to meet the required reduction. This allows Rhode Island to meet the low enhanced I/M performance standard pursuant to 40 CFR 51.351(g).

The Rhode Island submittal includes the following program design parameters:

Network type—Test and repair
Start date—2000
Test frequency—biennial
Model year/ vehicle type coverage—most recent 25 years, light and heavy duty, gasoline
Exhaust emission test type—transient
Emission standards—1.2 HC, 20.0 CO, 3.0 NO_X
Emission control device check—yes
Evaporative system function checks—gas cap only
Stringency (pre-1981 failure rate)—N/A
Waiver rate—3%
Compliance rate—96%
Evaluation date(s)—2002 and 2004

Rhode Island has submitted modeling demonstrations using the EPA computer model MOBILE5b showing that the low enhanced performance standard reductions will be met in 2002 with the proposed state program. This demonstration assumed a 96% compliance rate, 3% waiver rate, and 75% of IM 240 credits. (See Section VI below for a discussion on interim emission reduction credit.)

Rhode Island's modeling shows that the program will meet the ''low enhanced I/M performance standard'' for HC, and NO_X by 2002. This part of the submittal meets the requirements of

40 CFR 51.351 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Clean Air Act and the federal I/M rule. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

Rhode Island has designed a test-and-repair network with dynamometer testing in a computer connected network. The program evaluation testing will consist of a NYTEST test conducted immediately after the RI2000 test on 350 randomly selected vehicles. In addition, annual remote sensing data from on-road testing will be compared with remote sensing data collected prior to the start of the program and for subsequent years to provide an alternative assessment method. EPA's regulations at 40 CFR 51.353 allow a state to submit a demonstration that a decentralized test-and-repair network achieves the level of credit, as compared to a centralized program, that a state is claiming for its program. Rhode Island is assembling data for a full demonstration of the efficacy of its test-and-repair network, some of which EPA has already received, and EPA is requiring Rhode Island to submit additional documentation before EPA finally approves this program. EPA is nevertheless prepared to propose full approval of Rhode Island's I/M program pending submittal of their demonstration. Rhode Island has submitted data concerning failure rate by model year upon which we will base our proposed approval and Rhode Island will be submitting data concerning actual waiver rates and station audit results which will be incorporated into the analysis before final approval. While absolute network effectiveness may not be known with this limited data, EPA believes that Rhode Island's network effectiveness demonstration meets the same standard applied to effectiveness demonstrations applied to other states under section 51.353. This element is part of the basis for proposed approval of the Rhode Island I/M SIP.

Adequate Tools and Resources—40 CFR 51.354

The federal I/M rule requires Rhode Island to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

Rhode Island has provided for a dedicated fund to provide the additional resources, in addition to the resources assigned to the existing safety program, needed to implement the program. A portion of the fee goes directly to the contractor ($13.00) and part of it goes to the state ($2.00) to support the program. Rhode Island submitted a breakdown of funds and full time employees for the Department of Motor Vehicles (DMV) and DEM to operate the program. These resources along with the contractor resources appear to be adequate to meet these needs. An annual budget estimate is included in Section 6 of the submittal. This part of the submittal meets the requirements of 40 CFR 51.354 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Rhode Island program provides biennial testing in a test-and-repair network. The test-and-repair structure of the program and approximately 350 test stations are expected to provide customer convenience. The contract specifies criteria to provide convenient locations throughout the state. Legal authority is provided in 31–47.1–3 of The General Laws of Rhode Island. The performance standard is achieved with this biennial format. This part of the submittal meets the requirements of 40 CFR 51.355 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a).

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions, including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the analysis of the program's potential emission reduction.

The Rhode Island program tests light duty gasoline vehicles less than 25 years old. The mobile modeling contains a model year profile provided by the state for the Rhode Island vehicles included in the program. Legal authority is provided in Section 31–47.1–3 of the

General Laws of Rhode Island and section 1.2, Applicability, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1. Exemptions are also specified in this regulation and have been addressed in the modeling. Rhode Island is not significantly impacted by vehicles outside the program area, since the Rhode Island program is implemented statewide and each surrounding state (*i.e.*, Connecticut and Massachusetts) is implementing a statewide enhanced I/M program. This part of the submittal meets the requirements of 40 CFR 51.356 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Federally owned vehicles operated in Rhode Island are required to meet the same requirements as Rhode Island registered vehicles. However, EPA is not requiring states to implement 40 CFR 51.356(a)(4) dealing with federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this regulation be revised since it appears to grant states authority to regulate federal installations in circumstances where the federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, EPA is not proposing approval or disapproval of the specific requirements which apply to federal facilities at this time.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications,'' EPA–AA–EPSD–IM–93–1, dated April 1994 and ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications,'' EPA–AA–RSPD–IM–96–2, dated July 1996.

Rhode Island will use the RI2000 test (BAR31 test with NYTEST equipment). Test procedures and standards are specified in: (1) Section 9 and Appendix A, Equipment and Test Specifications, of the November 17, 2000 SIP submittal; (2) section 1.4, Rhode Island Vehicle Inspection Program Procedures, and section 1.5, Emission Standards and Criteria, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1; and (3) Air Pollution Control Regulation No. 34, Rhode Island Motor Vehicle Inspection/Maintenance Program. This part of the submittal meets the requirements of 40 CFR 51.357 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The specifications for the computerized test equipment to be used in the program are included in Appendix A, Equipment and Test Specifications, of the November 17, 2000 SIP submittal. This part of the submittal meets the requirements of 40 CFR 51.358 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Rhode Island's November 17, 2000 SIP submittal includes provisions which describe and establish quality control measures for the emission measurement equipment, and record keeping requirements in Section 12, Quality Assurance/Quality Control, and Appendix I, QA/QC Plan. This part of the submittal meets the requirements of 40 CFR 51.359 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Rhode Island has chosen to allow cost waivers and compliance via diagnostic inspection. The Rhode Island waiver requirements are described in section 13 of the submittal and will require $450 plus CPI adjusted cost waiver. After January 1, 2001, $450 must be spent on appropriate repairs and the amount will subsequently be adjusted to account for CPI changes by January 1, 2004. Only repairs performed by a registered repair technician can be credited toward a waiver. Section 1.9 of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 specifies waiver requirements including requirements that creditable cost of repairs shall not include costs covered by warranty or tampering reversal, and must be made by a Certified Inspection Repair Technician. The submittal assumes a maximum 3% waiver rate and a commitment to revise the SIP if it is exceeded. Rhode Island submitted these waiver provisions for the purpose of addressing the waiver provisions of EPA's I/M rule. This element of the submittal is part of the basis for proposed approval of the Rhode Island I/M SIP.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has

been more effective than registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Section 14 of the submittal explains enforcement procedures for the program. Legal authority is contained Rhode Island General Law Chapter 31–47.1, Motor Vehicle Emissions Inspection Program. Registration denial will start January, 2001, and will be in effect before final EPA action on the I/M SIP is taken. The data base will be maintained by the contractor and tied in with the Department of Motor Vehicles database. Section 1.4.2, Registration, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 specifies registration denial requirements starting January 1, 2001. Rhode Island used a 96% compliance rate for modeling purposes, but did not commit to this rate. The final submittal must have a commitment to maintain 96% compliance rate in practice. This part of the submittal meets the requirements of 40 CFR 51.361 of the federal I/M rule except for the absence of the commitment to maintain a 96% compliance rate in the program. This commitment must be submitted prior to final action by EPA.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The contract between the state and the program provider details the coordination of data between the workstation and DMV to enforce, audit and evaluate this requirement. However, the submittal does not address training, auditing, and oversight of the DMV functions of the enforcement program. This documentation must be submitted prior to final EPA action on the SIP. This part of the submittal meets the requirements of 40 CFR 51.362 of the federal I/M rule with the exception of DMV training, auditing, and oversight functions, which must be submitted prior to final action by EPA.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The quality assurance program is described in Section 12, Quality Assurance/Quality Control, and Appendix I, QA/QC Plan, of the submittal. This element of the submittal is part of the basis for proposed approval of the Rhode Island I/M SIP.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

Section 15 of the submittal, Enforcement—Program Manager, AIRS, and Inspectors, describes provisions for enforcement against stations and inspectors. Sufficient resources have been provided to enforce the program and are addressed in the resources section. The contractor may disconnect inspection stations from the computer system without a prior hearing if there is a problem with calibration or if the station is suspected of conducting improper inspections. The contract terms provide for penalties against the contractor. In addition, section 31–47.1–9 of the General Laws of Rhode Island provides for fines and civil penalties of up to $1,000 fine or imprisonment for up to 30 days or both for violations. This part of the submittal meets the requirements of 40 CFR 51.364 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The Rhode Island SIP provides a commitment to meet all of the data collection requirements and has listed all the required data which will be collected in Section 16, Data Collection, of the state submittal. Data collection for quality control is addressed in Appendix I, QA/QC plan, of the submittal. This part of the submittal meets the requirements of 40 CFR 51.365 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: Testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

Section 17 of the submittal addresses data analysis and reporting procedures and are supported in the contract. This part of the submittal meets all of the requirements of 40 CFR 51.366 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Section 1.14, Authorization and Certification, of Rhode Island Motor Vehicle Safety and Emissions Control Regulation No.1 requires training and certification of inspectors. The contractor is required to train and test inspectors with the appropriate curriculum as specified in the federal I/M rule. The training manual and an example test are included in Appendix I, QA/QC Plan, of the submittal. This part of the submittal meets the requirements of 40 CFR 51.367 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

Section 19, Public Information and Consumer Protection, of the submittal and Section 3 of the contractor's RFP response contain a detailed public awareness plan for the 7 years of the contract. Consumer protection will be provided through the public awareness plan and a challenge test program. This part of the submittal meets the requirements of 40 CFR 51.368 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation, and a description of the repair technician training resources available in the community.

As described in Section 20, Improving Repair Effectiveness, of the submittal, Rhode Island will be providing subsidized mechanic training through a CMAQ grant, a diagnostic center, and a technician performance evaluation and monitoring system. This part of the submittal meets the requirements of 40 CFR 51.369 of the federal I/M rule and is part of the basis for proposed approval of the Rhode Island I/M SIP.

Compliance with Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

EPA will adopt regulations to require submittal of this information by manufacturers to develop a database to support this requirement. The Rhode Island I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. This part of the I/M rule will be reevaluated after EPA adopts the needed rule.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area.

The Rhode Island SIP submittal describes an on-road testing program which is a requirement of the program contract. The on-road testing program meets the minimum testing requirements of the federal I/M rule.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Rhode Island program started mandatory testing on January 1, 2000 in accordance with the terms of the contract. Although this is beyond the start date specified in EPA's I/M rule, that date has already passed and it is now impossible to start by that date. The program has now started and EPA believes it is appropriate to approve this currently operating program.

VI. What Emission Reduction Credit May Rhode Island Assume in the Interim Until the EPA Has Information Available To Assign Appropriate Credit?

Rhode Island and Massachusetts use the same testing equipment and testing cycle. Specifically the New York state test equipment (NYTEST), and the BAR31 test cycle. In EPA's supplementary proposed rule on the Massachusetts I/M SIP published on November 30, 1999 (64 FR 66829), EPA stated that there was no data available at the time to assign the exact emission reduction credit for the combination of test type and equipment that Massachusetts was implementing (*i.e.*, a 31 second transient test utilizing the BAR 31 trace and NYTEST equipment). We did state that, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates compliance with EPA's performance standard for a low enhanced program. This is also the case for Rhode Island. We also acknowledged that Massachusetts will conduct necessary comparison testing to determine the appropriate emission reduction for SIP credit using the combination of the BAR 31 transient trace with NYTEST equipment. Rhode Island will be able to utilize this same information to establish more accurate emission reduction credits for future SIP planning by Rhode Island.

Rhode Island is at this time using 75% of IM240 credit for future planning. Based on recent information on the NYTEST system, EPA believes this is a reasonable assumption. EPA has evaluated a test program which evaluated the difference in effectiveness between EPA's IM240 equipment and NYTEST equipment which is utilized by Rhode Island. This test program quantified the effectiveness of NYTEST and granted it 95% of the IM240 hydrocarbon (HC) reduction credit and 99% of the IM240 reduction credit for both carbon monoxide (CO) and nitrogen oxides (NO_X).

In November 25, 1996, EPA had quantified the BAR31 cycle currently run in Oregon (OR31) as receiving 90% of the IM240 HC credit and 95% of the IM240 CO and NO_X credit. Although the OR31 uses the same cycle as the RI2000 test, the OR31 employs IM240 equipment, which is more accurate than the BAR97 (NYTEST) equipment specified in the RI2000 test. Therefore, the credit afforded the RI2000 at this time needs to be slightly reduced to reflect this equipment discrepancy. The NYTEST equipment analysis taken in concert with the earlier information defining the relationship between OR31 and IM240 cycles results in the Agency agreeing, based on our best engineering judgment, that the level of credit Rhode Island is assuming (75% of IM240) from the I/M program for future air quality planning appears currently to be acceptable. Therefore, EPA is proposing to approve this interim level of credit for planning purposes.

Once the comparison study results are available from the Massachusetts study, EPA will establish appropriate credit for the BAR31 test done on NYTEST equipment. If the emission reduction credits assigned do not meet or exceed

the credit assumed by Rhode Island, Rhode Island and EPA will take appropriate action to correct any SIP shortfall in any SIP demonstrations that may rely on credit from the I/M program.

VII. What Is EPA's Proposed Action on This Submittal?

EPA's review of this material indicates that with the exception of three nonregulatory items, the submittal addresses the requirements of the I/M rule. EPA is proposing to approve the Rhode Island SIP revision for enhanced motor vehicle inspection and maintenance, which was submitted on November 17, 2000. Prior to EPA taking final action, however, Rhode Island must include in its final submittal: (1) A commitment to maintain a 96% compliance rate (or revise the SIP accordingly), (2) the appropriate enforcement oversight provisions for the DMV, and 3) a demonstration of the performance of its test-and-repair network. Additionally, we are also proposing approval of an interim level of emission reduction credit for the inspection and maintenance program that can be utilized by Rhode Island for SIP planning. If the state fails to submit the required items in its final SIP submittal, EPA proposes to grant only a limited approval of the program. In this case, the I/M SIP would be approved as a SIP strengthening measure, and not approved as meeting the CAA requirements for an enhanced I/M program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VIII. How Can the Public Participate in This Process?

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA-New England office listed in the *Addresses* section of this notice.

Interested parties are encouraged to participate in the concurrent state process by presenting oral or written testimony at Rhode Island's December 21, 2000 public hearing, at 10 am in Conference Room ''C'' at One Capitol Hill, Providence, RI. Written comments will be accepted until 12 noon on December 22, 2000 at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

IX Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as addressing Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 12, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–32236 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6919–1]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to amend final rules.

SUMMARY: Section 129 of the Clean Air Act (CAA) directs us to develop new source performance standards (NSPS) and emission guidelines (EG) for municipal waste combustors (MWC). The final NSPS and EG limit periods of startup, shutdown, or malfunction to 3 hours per occurrence. Recently, it has come to our attention that there are a few types of malfunction which require shutdown, but, because of the nature of the malfunction and ensuing safety concerns, require longer than 3 hours for shutdown of the MWC. This notice

announces our intent to amend the NSPS and EG for large MWC to provide regulatory relief from this 3-hour limitation for shutdowns due to these types of malfunction.

ADDRESSES: Dockets No. A–90–45 and A–89–08 contain the supporting information for development of NSPS and EG for large MWC and are available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. These dockets are available at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, electronic mail address: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION: Section 129 of the CAA requires us to develop NSPS and EG for several categories of solid waste incinerators, one of which is MWC. On December 19, 1995, we promulgated final NSPS and EG for large MWC (60 FR 65387). These NSPS and EG contain a provision requiring large MWC to comply with the standards (*i.e.,* emission limits) at all times, except during periods of startup, shutdown, and malfunction. Periods of startup, shutdown, and malfunction, however, are limited to 3 hours per occurrence. If it takes longer than 3 hours to startup or shutdown, or if a malfunction continues for longer than 3 hours, a large MWC is required to comply with the standards during that period of startup, shutdown, or malfunction which exceeds 3 hours.

Recently, it has come to our attention that there are a few types of malfunction which require shutdown, but, because of the nature of the malfunction and the ensuing safety concerns, require longer than 3 hours to shutdown the MWC. For the most part, this does not present a problem; proper operation of the emission control systems permit the MWC to maintain compliance with the emission limits, with one exception. This exception is the emission limit for carbon monoxide (CO).

Operating experience has identified three types of malfunction which require shutdown, but which require in excess of 3 hours for shutdown, during which it is not possible to comply with the emission limit for CO. The first is waterwall boiler tube failure, the second is loss of a combustion air fan, and the third is combustion grate failure.

These three types of malfunction lead to increased CO emissions. However, attempting to shutdown an MWC rapidly in these situations can present a risk of explosion which, in the extreme, could result in serious injury or even death of plant personnel. To avoid this risk, more than 3 hours is needed to safely shutdown the MWC under these situations.

The purpose of today's notice is to announce that we intend to amend the NSPS and EG for large MWC to provide regulatory relief from compliance with the CO emission limit during these types of malfunction and shutdown. While we intend to proceed quickly with adopting such amendments, we believe it is appropriate to announce our intent in advance.

Dated: December 13, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–32237 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–428]

Federal–State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission seeks comment on the narrow issue of whether to continue to apply certain sections of the Commission's rules to transfers of telephone exchanges between non-rural carriers following the phase-down of the interim hold-harmless support.

DATES: Comments are due on or before January 17, 2001, and reply comments are due on or before February 1, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on December 8, 2000. This is a companion to the Commission's Thirteenth Report and Order in CC Docket No. 96–45 also released December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on the narrow issue of whether to continue to apply § 54.305 of the Commission's rules to transfers of telephone exchanges between non-rural carriers following the phase-down of interim hold-harmless support for non-rural carriers, as provided for in the Commission's companion Thirteenth Report and Order in CC Docket No. 96–45 released on December 8, 2000. Section 54.305 requires a carrier that acquires an exchange to step into the seller's shoes for universal service support purposes. The Commission adopted the rule in 1997 as a stopgap measure to prevent carriers receiving support based on the size of their study areas and embedded costs from ''placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]'' Because all non-rural carriers will receive support based on forward-looking economic costs following the phase-down of interim hold-harmless support, we believe that the need for § 54.305 would no longer exist with regard to transfers between non-rural carriers once the phase-down is complete.

II. Further Notice of Proposed Rulemaking

2. Following the phase-down of interim hold-harmless support, all non-rural carriers will receive high-cost support based on the forward-looking economic costs of operating a given exchange. As a result, ''the level of support will not be a primary factor in a [non-rural] carrier's decision to purchase exchanges because the carrier's support will not be based on the size of the study area nor embedded costs.'' We believe this rule change is necessary regardless of the outcome of the current Federal–State Joint Board on Universal Service examination of the

Rural Task Force Recommendation on § 54.305, because application of § 54.305 to transfers between non-rural carriers may impede operation of the forward-looking mechanism by preventing calculation of the forward-looking economic costs of operating a transferred exchange on an ongoing, quarterly basis. We, therefore, seek comment on whether to amend § 54.305 of our rules so that it does not apply to transfers of exchanges between non-rural carriers following the phase-down of interim hold-harmless support.

III. Procedural Matters

a. Regulatory Flexibility Act Certifications—Final and Initial

3. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of proposed policies and rules, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in Standard Industrial Classification Code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

4. We conclude that an IRFA is not required here. The foregoing Further Notice of Proposed Rulemaking proposes a rule change. The proposed rules affect the amount of high-cost support provided to non-rural carriers. Non-rural carriers generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. Thus, the rules proposed here do not affect a substantial number of small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the rule change proposed in the Further Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Further Notice of Proposed Rulemaking and of this certification to the Chief Counsel for Advocacy of the SBA. In addition, this certification will be published in the **Federal Register**. The Commission will send a copy of this Further Notice of Proposed Rulemaking, including a copy of this certification, in a report to Congress pursuant to the SBREFA.

b. Paperwork Reduction Act

5. The instant Further Notice of Proposed Rulemaking proposes no information collections.

c. Comment Filing Procedure

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 17, 2001, and reply comments on or before February 1, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. In addition, parties who choose to file by paper must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted and comments are requested as described.

22. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Further Notice of Proposed Rulemaking, including the Regulatory Flexibility Act Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32072 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2791, MM Docket No. 00–246, RM–9859]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KRTV Communications, Inc., licensee of station KRTV(TV), NTSC Channel 3, Great Falls, Montana, requesting the substitution of DTV Channel 7 for its assigned DTV Channel 44. 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. However, since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 7 to Great Falls with a power of 160 (kW) and a height average terrain (HAAT) of 180 meters.

DATES: Comments must be filed on or before February 5, 2001, and reply comments on or before February 20, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for KRTV Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–246, adopted December 14, 2000, and released December 15, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV Channel 44 and adding DTV Channel 7 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–32133 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2603, MM Docket No. 00–6, RM–9791, RM–9890]

Radio Broadcasting Services; McCook, Alliance, Imperial, NE, Limon, Parker, Aspen, Avon, Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in response to the counterproposal of The Meadowlark Group, permittee of Station KAVD(FM), Limon, CO, requesting the substitution of Channel 276C for Channel 276C1, its reallotment to Parker, CO, as the community's first local aural service, and the modification of Station KAVD's permit accordingly, issues an Order to Show Cause to Halstead Communications, licensee of Station KPNY, Channel 271C1, Alliance, NE, as to why its license should not be modified to specify operation on Channel 263C1 and to Imperial Media Association, permittee of a new station on Channel 275C, Imperial, NE, as to why its permit should not be modified to specify operation on Channel 271C. The counterproposal was filed in response to the proposed allotment of Channel 271C1 to McCook, NE. *See* 65 FR 4798, February 1, 2000.

DATES: Comments must be filed on or before January 8, 2001, and reply comments must be filed on or before January 23, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The Commission proposes the following channel changes to accommodate the allotment of Channel 276C to Parker, CO, at coordinates 39–26–08 NL; 104–02–05 WL, or alternatively, to Limon, CO, at coordinates 39–25–27 NL; 104–00–38 WL: (1) The substitution of Channel 249C2 for Channel 276C2 at Avon, CO, at coordinates 39–37–52 NL; 106–27–42 WL, and modify the license of Station KZYR; (2) substitute Channel 276C3 for Channel 249C3 at Aspen, CO, at coordinates 39–13–33 NL; 106–50–00 WL, and modify the license of Station KSPN–FM; (3) substitute Channel 227A for vacant Channel 276A at Westcliffe, CO, at coordinates 38–04–28 NL; 105–32–13 WL; (4) substitute Channel 263C1 for Channel 271C1 at Alliance, NE, at coordinates 42–07–01 NL; 103–07–09 WL, and modify the license of Station KPNY; (5) substitute Channel 271C for Channel 275C at Imperial, NE, at coordinates 40–45–31 NL; 101–54–32 WL, and modify the construction permit of Imperial Media Association (BPH–19970924ML); allot Channel 275C1 to McCook, NE, at coordinates 40–12–00 NL; 100–51–25 WL. This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 00–6, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

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 Colorado, is amended by adding Channel 276C3 and removing Channel 249C3 at Aspen, adding Channel 249C2 and removing Channel 276C2 at Avon, adding Channel 227A and removing Channel 276A at Westcliffe, adding Channel 276C and removing Channel 276C1 at Limon. Alternatively, remove Channel 276C1 at Limon and add Parker, Channel 276C.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 263C1 and removing Channel 271C1 at Alliance, adding Channel 275C1 at McCook, and by adding Channel 271C and removing Channel 275C at Imperial.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–31311 Filed 12–15–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 393

[FMCSA Docket No. FMCSA–97–2289]

RIN 2126–AA27

Development of a North American Standard for Protection Against Shifting and Falling Cargo

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to revise the regulations concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce. We would issue new cargo securement standards based on the North American Cargo Securement Standard Model Regulations, reflecting: The results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. Generally, the proposed revision would require motor carriers to change the way they use cargo securement devices to prevent certain articles from shifting on or within, or falling from CMVs. In some instances, the proposed changes could require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes. The intent of this rulemaking is to reduce the number of accidents caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian, and Mexican cargo securement regulations.

DATES: You must submit comments on or before March 19, 2001.

ADDRESSES: You can mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit your comments electronically at *http://dms.dot.gov.* We can view the NPRM and all items in the docket at that same internet address. You should include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments in the Docket Management System (DMS) from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to be notified that we received your comments please include a self-addressed, stamped envelope or postcard, or print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1790; or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1993, the House of Representatives held a hearing concerning the adequacy of Federal regulations on cargo securement, as well as the enforcement of those regulations (''Truck Cargo Securement Regulations and Enforcement, 1993: Hearing Before the Subcommittee on Investigations and Oversight of the House of Representatives' Committee on Public Works and Transportation,'' 103rd Cong., 1st Sess. 32 (1993)) . The report of the July 1993 hearing is included in the public docket. The hearing was prompted by several cargo securement accidents that occurred in New York between 1990 and 1993. During the hearing, the Federal Highway Administrator stated that the Ontario Ministry of Transportation had requested that the FHWA review a proposal prepared on behalf of the Canadian Council of Motor Transport Administrators (CCMTA)—a non-profit association of senior officials from Federal, Provincial, and Territorial departments and agencies responsible for the administration, regulation, and control of motor vehicle transportation and highway safety—for a research program to evaluate cargo securement regulations and industry practices. The Administrator informed the subcommittee that the FHWA would participate in the research effort and consider incorporating the results of the research into the Federal Motor Carrier Safety Regulations (FMCSRs).

A cargo securement research working group was organized by the CCMTA and the Ontario Ministry of Transportation to discuss the research methodology with industry groups and Federal, State, and Provincial governments in the United States and Canada. The working group, which included representatives from the FHWA, Transport Canada (the Federal department responsible for developing and enforcing the regulatory aspects of motor vehicle and motor carrier safety in Canada), the CCMTA, the Commercial Vehicle Safety Alliance (CVSA), several States and Provinces, and U.S. and Canadian industry, held its first meeting August 16–17, 1993. A report identifying the cargo securement issues to be examined through the research program and describing the selected research methodology was published by the Ontario Ministry of Transportation in November of 1993. A copy of the minutes of the first meeting and a copy of the report entitled ''A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks'' are included in the public docket.

Discussion of the Research Project

The North American Load Security Research Project was initiated to develop an understanding of the mechanics of cargo securement on heavy trucks. The research was intended to provide a sound technical basis for development of the North American Cargo Securement Standard Model Regulations. Tests were conducted to examine the fundamental issues of anchor points, tiedowns, blocking and friction, and issues related to securement of dressed lumber (representative of cargoes that are loaded lengthwise on a vehicle and secured with transverse tiedowns), large metal coils, concrete pipe, intermodal containers, and other commodities. The research is documented in the following reports:

1. ''Experimental Evaluation of Friction Coefficients of Typical Loads and Trailer Decks Under Vertical Vibration, North American Load Security Research Project, Report 2,'' Canadian Council of Motor Transport Administrators, 1997.

2. ''Slippage Tests with Anti-skid Mats, North American Load Security Research

Project, Report 3,'' Canadian Council of Motor Transport Administrators, 1997.

3. ''Dressed Lumber Tiedown Tests, North American Load Security Research Project, Report 4,'' Canadian Council of Motor Transport Administrators, 1997.

4. ''Effect of Cargo and Tiedown Characteristics on Equalization of Tension in the Spans of Tiedowns, North American Load Security Research Project, Report 5,'' Canadian Council of Motor Transport Administrators, 1997.

5. ''Effect of Binder Type and Chain Length on Tension in Chain Tiedowns, North American Load Security Research Project, Report 6,'' Canadian Council of Motor Transport Administrators, 1997.

6. ''Friction Coefficients Between Typical Cargo and Truck Decks, North American Load Security Research Project, Report 7,'' Canadian Council of Motor Transport Administrators, 1997.

7. ''Load Capacity of Nailed Wood Blocking, North American Load Security Research Project, Report 8,'' Canadian Council of Motor Transport Administrators, 1997.

8. ''Effect of Cargo Movement on Tension in Tiedowns, North American Load Security Research Project, Report 9,'' Canadian Council of Motor Transport Administrators, 1997.

9. ''Evaluation of the Strength and Failure Modes of Heavy Truck Cargo Anchor Points, North American Load Security Research Project, Report 10,'' Canadian Council of Motor Transport Administrators, 1997.

10. ''Tests on Methods of Securement for Thick Metal Plate, North American Load Security Research Project, Report 11,'' Canadian Council of Motor Transport Administrators, 1997.

11. ''Tests on Methods of Securement of Large Boulders, North American Load Security Research Project, Report 12,'' Canadian Council of Motor Transport Administrators, 1997.

12. Bending Strength of Trailer Stakes, North American Load Security Research Project, Report 13, Canadian Council of Motor Transport Administrators, 1997.

13. ''Effect of Tiedowns on Wood Blocks Used as Dunnage, North American Load Security Research Project, Report 14,'' Canadian Council of Motor Transport Administrators, 1997.

14. ''Tests on Methods of Securement for Metal Coils, North American Load Security Research Project, Report 15,'' Canadian Council of Motor Transport Administrators, 1997.

15. ''Tests on Methods of Securement for ISO Containers, North American Load Security Research Project, Report 15,'' Canadian Council of Motor Transport Administrators, 1997.

16. ''Analysis of Heavy Truck Cargo Anchor Points, North American Load Security Research Project, Report 16,'' Canadian Council of Motor Transport Administrators, 1997.

17. ''North American Load Security Research Project Summary Report, North American Load Security Research Project, Report 18,'' Canadian Council of Motor Transport Administrators, 1997.

18. ''Assessing a Securement Method for the Transportation of Heavy Machinery Using a Combination of Highway Vehicles, North American Load Security Research Project, Report 19,'' Canadian Council of Motor Transport Administrators, 1997.

A copy of each of the reports listed above is in the public docket. Copies of these reports may be purchased from the CCMTA, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8. The telephone number for the CCMTA is 613–736–1003; the web site address is *http://www.ccmta.ca.*

There were a number of important findings, conclusions, and recommendations discussed by the researchers. The following is a summary of three of the major concerns discussed by the authors and how they apply to the transportation of a wide range of commodities.

Anchor Points

The researchers believe the results of their work indicate that vehicles used to transport heavy articles, such as metal coils, should be equipped with anchor points designed for the load. The anchor points on CMVs should be provided with a load-rating based on the manufacturer's analysis of the possible directions that the applied forces will act on the anchor point.

Tiedowns

The researchers observed that tiedowns either resist applied forces, or increase friction between the cargo and the vehicle deck. The researchers believe that if more attention is focused on other means of cargo securement (i.e., blocking and bracing, etc.) it may be possible to improve current cargo securement methods without any change to the tiedown requirements. The authors indicated that the current requirement for aggregate working load limits may be adequate for general commodities secured by transverse tiedowns, but other cases may require a different tiedown capacity depending on the other securement provided.

Friction

The researchers concluded that friction is the principal factor that keeps most cargo from shifting, so its role should be formally recognized. Trailer decks, and cargo handling equipment like skids used during transportation, should be designed with high coefficients of friction. Rubber mats appear to increase the coefficient of friction beyond 0.5 for many combinations of cargo and deck, and the use of these mats should be encouraged. However, friction should never be the sole means of cargo securement.

Use of Research Results

As various portions of the research were completed, the results were provided to the Standard Drafting Group which was responsible for leading the effort at drafting the North American Model Regulations. Almost all of the research was completed by late 1997, with a few remaining items completed in 1998. The drafting group was responsible for reviewing the draft research reports to determine how the information could best be used to improve specific cargo securement requirements in the U.S., Canada, and Mexico.

Process for Development of the North American Model Regulations

The Standard Drafting Group developed the outline for the model regulations with most of the detailed performance criteria added as the research reports were completed. Membership in the drafting group included representatives from the FHWA, Transport Canada, CCMTA, the Ontario Ministry of Transportation, Quebec Ministry of Transportation—Ontario and Quebec conducted most of the research—and the CVSA. The CVSA was included in the drafting group because it is an organization of Federal, State, and Provincial government agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to improvement of commercial vehicle safety. The membership of the drafting group was limited because there was an informal agreement among the interested parties that it would have been impractical to draft a technical document with a larger number of participants.

The process used for further developing this outline for the model regulations involved the North American Cargo Securement Harmonization Committee, a group which reviewed major portions of this outline as it was completed by the drafting group. Membership in the harmonization group was open to all interested parties in the U.S., Canada, and Mexico. This process was intended to ensure that all interested parties had an opportunity to participate in the development of the model regulations, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations, as well as safety advocacy groups and the general public. The harmonization group held public meetings at locations in the United States and Canada, during which drafts

of the North American Cargo Securement Standard were presented for review and comment. Representatives of the CCMTA and the CVSA served as co-chairpersons for the harmonization group and organized the public meetings. The meetings held in the U.S. concerning the review of substantive material that would be included in the model regulations were announced by the FHWA in the **Federal Register**. There were nine meetings held in the U.S. and Canada. Copies of the minutes from the meetings, including lists of the agencies, organizations and companies represented at the meetings, are in the public docket.

For individuals and groups unable to attend the meetings, the CCMTA posted information on the Internet. The Internet address is *http://www.ab.org/ccmta/ccmta.html.* Individuals and organizations with Internet electronic mail addresses were provided with the opportunity to have their names added to an electronic mailing list to receive information on the development of the standard.

After all interested parties were given the opportunity to comment and their concerns had been considered, the final version of the North American Cargo Securement Standard was published in May 1999 by the CCMTA. A copy of the standard is in the public docket. Federal, State, and Provincial governments throughout North America have now been encouraged to adopt it through their respective rulemaking processes.

Publication of Advance Notice of Proposed Rulemaking

On October 17, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Cargo Securement Standard Model Regulations (61 FR 54142). The agency requested comments on its consideration of a rulemaking to overhaul the Federal cargo securement regulations based on the research program described above and other published cargo-securement related research, such as Southern Illinois University's March 1995 report entitled ''Analysis of Rules and Regulations for Steel Coil Truck Transport.'' A copy of this report is included in the public docket. The agency also requested comments on the process that would be used to develop the North American Cargo Securement Standard Model Regulations.

Discussion of Comments to the ANPRM

We analyzed 10 comments that we received in response to the ANPRM. The commenters were: Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); the CCMTA; CVSA; the Illinois Department of Transportation (IDOT); Insurance Corporation of British Columbia (ICBC); the International Brotherhood of Teamsters; Landstar Gemini (Landstar); the Truck Trailer Manufacturers Association (TTMA); and the Web Sling and Tiedown Association.

Generally, the commenters agreed with the agency's plan to participate in the research program to evaluate cargo securement systems, and the approach the agency described for developing the North American Cargo Securement Standard Model Regulations. However, some of the commenters expressed concerns about specific issues they believe were not discussed adequately in the research and standards development program described in the ANPRM.

General Comments

The Illinois Department of Transportation stated that the use of a diverse ''drafting group'' to develop guidelines and performance standards based upon current research appears to be a viable method of regulatory development. They asked that the standards be based on sound engineering principles. The output should be both user friendly and enforceable.

The CCMTA and CVSA indicated that they strongly support the agency's decision to use the research results to overhaul the Federal cargo securement regulations. Both organizations stated that they believe a uniform, performance-based cargo securement standard will not only improve highway safety, but also will provide equipment manufacturers and carriers with increased flexibility to meet the objectives of the standard.

The Web Sling and Tiedown Association indicated that it supports updating the current regulations to improve the safe transportation of cargo. The association believes that allowing industry to participate in the writing of standards will be beneficial both to the public and to industry.

Accident Data

The ATA and TTMA indicated that they believe the agency should review currently available accident data prior to making significant changes to the cargo securement regulations. They suggested that the agency should also conduct a study of accidents to learn from actual experience where improper loading has either caused or contributed to safety problems. Among their concerns were that the new rules not be burdensome with details for every type of cargo to be secured.

The TTMA pointed out that since accidents involving metal coils seemed to be the impetus for this rule, a rule for coils should precede this current NPRM. Then, if data supported a broader application of securement rules, at that time rules for other types of cargo should be implemented.

Securement of Intermodal Containers

Landstar believed the rules for securing intermodal cargo must be unambiguous. They recommended using integral pins on chassis, avoiding using cargo containers only secured by chains, straps, or other binders, and using integral locking devices.

Crashworthiness Standards for Cargo Securement Systems

The Advocates requested that the agency develop standards that would ensure that cargo remains inside or on the CMV during a collision or rollover, and accommodate a variety of crash types, especially rollovers and trailer detachment collisions.

FMCSA Response to Comments

The FMCSA believes the adoption of the North American Cargo Securement Standard Model Regulations would ensure that the FMCSRs concerning protection against shifting and falling cargo provide clear and objective guidelines to both motor carriers and enforcement officials on what is necessary to ensure safety and achieve compliance with the rules. At the same time, the rulemaking would ensure that the rules are technically sound. This rulemaking would close the gap between the letter and the purpose of the regulations, so that the intent of the rules is better expressed in the regulatory language.

On the issue of harmonization of the cargo securement regulations, the FMCSA agrees with the CCMTA and CVSA that there is a need to establish more uniform requirements among all the jurisdictions in North America and that the requirements should be based on engineering data and test results. There is no readily apparent reason why the cargo securement rules should vary significantly from jurisdiction to jurisdiction in North America. There may be differences in the exact wording, but there need not be substantial differences in what is required.

While the FMCSA agrees with commenters that the uniform regulations being considered should be performance-based, the agency believes

the rules must contain sufficient detail to be easily understood, used, and enforced. The rules should be performance-based to the greatest extent practicable, but must be written in a manner that ensures that motor carriers and enforcement officials will find the rules meaningful. The agency believes that its proposed adoption of the North American Cargo Securement Standard Model Regulations would accomplish this objective.

With regard to comments about the need to study accident data, the agency believes that it is always important to consider accident data in determining whether to initiate a rulemaking. However, it is not always necessary to have accident data to justify initiating a rulemaking to improve the technical adequacy of safety regulations and to expand the regulatory text to better explain what is required of motor carriers.

Currently available accident data indicates that shifting or falling cargo is a contributing factor in less than one percent of the accidents self-reported by motor carriers that typically complied with the agency's former accident reporting requirements under 49 CFR part 394.

Note: On February 2, 1993 (58 FR 6726), the FHWA published a final rule amending the FMCSRs by removing part 394, Notification and Reporting of Accidents. As a result of that rulemaking, motor carriers are no longer required to file accident reports (Form MCS 50–T, Form MCS 50–B) with the agency or to make notification of fatal accidents. The effective date for the final rule was March 4, 1993.

Although the data suggests that the occurrence of cargo securement-related accidents is low compared to some other contributing factors for CMV accidents, the fact that these accidents continue to happen is reason enough for the agency to consider taking action.

The TTMA is correct that a major factor prompting Federal, State and Provincial agencies to participate in the research and standard development effort is accidents involving metal coils transported on flat-bed or platform trailers. The FMCSA does not, however, believe this rulemaking should be limited to the development of requirements for the transportation of metal coils, while the adoption of rules covering other commodities is postponed indefinitely until the agency gathers accident statistics to support rulemaking for those commodities. Metal coils result in some of the most horrific cargo securement-related accidents, but they are not the only commodity associated with accidents. Some effort is required not only to reduce the occurrence of metal coils shifting on or within vehicles, but to ensure proper securement of other commodities that can cause an accident resulting in fatalities and serious injuries when they are not properly secured.

In response to the ATA's statement about the importance of determining whether accidents are the result of rules that are technically incorrect, or improper loading and securement practices, the agency believes the current regulations have served their purpose well. They have provided performance-based requirements that allow for flexibility in the means for securing cargo. However, the research reports listed above identify several issues for which the current regulations do not include adequate guidance on proper securement. For example, the current regulations do not specifically account for the role friction plays in keeping certain loads in place. As a result, some motor carriers focus almost exclusively on the tiedowns and not enough on actions to increase the level of friction between cargo, the load-carrying surfaces of the CMV, and the level of friction between articles being transported.

Another example is that the current regulations do not make a distinction between direct and indirect tiedowns. Despite concerns that some participants expressed in the public meetings there is a fundamental difference between direct and indirect tiedowns.

Note: A ''direct tiedown'' is one that is intended to provide direct resistance to potential shifting of an article being transported. A direct tiedown may be attached to an article and to an anchor point on the CMV, or it may be attached to an anchor point, go around or through an article, then be attached to another anchor point. An ''indirect tiedown'' is one that is intended to increase the pressure of an article or stack of articles on the CMV. An indirect tiedown is attached to the vehicle, runs directly over or through an article, then is attached to another anchor point on the other side of the article, and is tightened.

This difference should not be overlooked when determining the number of tiedowns needed for heavy loads such as metal coils and construction equipment. Under the current rules, motor carriers could secure loads in a manner that complies with the safety regulations, but would provide a relatively small safety factor. If the motor carrier overestimated the strength of its securement system by a slight amount, there would be an increased likelihood that the load would shift or fall from the vehicle. By taking into account the differences between direct and indirect tiedowns, the rules would increase the safety factor and further reduce the likelihood of a cargo securement-related accident.

The proposal would make the regulations easier to understand, use, and enforce. Through an improved understanding of what is necessary to prevent cargo from shifting on or within a CMV, or falling from a vehicle, motor carriers that experience these types of accidents may learn effective methods to prevent future occurrences. Regulations that provide greater detail in specifying what is required of motor carriers would also help enforcement officials who must determine whether motor carriers have satisfied the rules.

In response to Landstar's comments about the securement of intermodal containers, and a question raised by the TTMA on the same issue, the FMCSA believes this rulemaking will establish appropriate requirements for the transportation of intermodal cargo containers. The agency has long recognized safety concerns about the transportation of intermodal cargo containers on flatbed and lowboy trailers.

On August 23, 1993, the FHWA published an advance notice of proposed rulemaking, Parts and Accessories for Safe Operation; Intermodal Cargo containers. The ANPRM announced that the agency was considering changes to the rules concerning securement of cargo containers (58 FR 44485, FHWA Docket No. MC–93–24). At that time the FHWA noted that there were substantial differences between the regulatory requirements of the FMCSRs, several States' cargo securement regulations, and industry practices. Some cargo containers are transported on container chassis or other trailers with twist locks, while others are transported on flatbed trailers or lowboy trailers and secured with chains and straps. The former method complies with current Federal regulations while the latter appears to be a common practice that can be done safely and effectively provided certain guidelines are followed. The proposed rule would include requirements for both methods of transporting cargo containers.

In a separate document to be published at a later date, the FMCSA will terminate the rulemaking started on August 23, 1993. The agency has considered all of the comments submitted in response to the 1993 ANPRM and shared this information with other members of the drafting group responsible for writing the North American Cargo Securement Standard Model Regulations. The agency does not believe it is necessary to handle the

issue of intermodal cargo container securement separately from all other cargo securement issues. Since the research included an examination of the performance of tiedowns used to secure cargo containers to vehicles other than container chassis, the agency believes there is sufficient technical data to support the proposed requirement.

On the subject of crashworthiness standards for cargo securement systems raised by Advocates, the FMCSA believes it would be extraordinarily expensive, and probably impracticable, to require that all cargo securement systems be capable of keeping loads in place during moderate to severe collisions, rollover accidents, and trailer detachments. The cargo securement regulations were never intended to provide protection against shifting and falling cargo under such circumstances, and there is no evidence that a significant number of secondary injuries or fatalities are caused by the impact of cargo thrown from a CMV as the result of an accident, as opposed to the impact of the CMV itself with the roadway, nearby objects or other vehicles. Crashworthiness standards would probably require many vehicles to be withdrawn from service (in the absence of a grandfather clause) and would certainly require others to be redesigned or retrofitted with additional equipment. The agency believes that its safety objectives can be accomplished at far lower cost by developing regulations directed at collision avoidance (*i.e.,* ensuring the prevention of cargo movement which could contribute to the accident) instead of imposing heavy regulatory burdens to manage the outcome of the crash.

Discussion of Proposal

The FMCSA proposes these rules based upon the North American Cargo Securement Standard Model Regulations. The agency would replace its current cargo securement-related regulations under § 392.9, concerning driver inspection of cargo and cargo securement systems, and §§ 393.100 through 393.106 concerning cargo securement methods.

The agency also proposes to amend § 393.5 to adopt definitions of: Aggregate working load limit; anchor point; bell pipe concrete; blocking; bracing; direct tiedown; frame vehicle; friction mat; hook-lift container; indirect tiedown; integral securement system; longwood; rail vehicle; shortwood; sided vehicle; tiedown; tractor-pole trailer; void filler; well; and working load limit. The agency would adopt these definitions to ensure a common understanding of the terminology used in the regulations. The definitions would be based on those in the model regulations.

The FMCSA notes that there are numerous other definitions in the model regulations. However, the agency does not believe it is necessary to adopt many of those definitions because the terms are already defined in the FMCSRs, even though with slightly different wording.

Inspection of Cargo and Securement Devices

The FMCSA would revise § 392.9 to propose that drivers be required to inspect the cargo and the securement devices within the first 50 miles (80.4 kilometers). Currently, § 392.9 requires inspection within the first 25 miles (40.2 kilometers). The FMCSA believes research concerning the effects of vibration on cargo securement devices and changes in the tension of indirect tiedowns, suggests that conditions of the securement system which would require the driver to make readjustments are more likely to occur after the vehicle has been driven between 25 and 50 miles, rather than 0 to 25 miles. This is because traveling beyond 25 miles would subject the vehicle to more vibration and forces over a longer period of time. However, the agency believes the maximum distance the vehicle could be operated safely prior to the inspection of the tiedowns should not exceed 50 miles. All other requirements currently contained in § 392.9 would remain the same. The agency would rewrite the section by putting it into plain language, but is not proposing any other substantive changes.

Applicability of the Proposed Rules

The FMCSA proposes that § 393.100 establish the applicability for the cargo securement rules under subpart I of part 393. The applicability of the proposed rule would be the same as the existing rule, covering all cargo-carrying commercial motor vehicles (as defined in 49 CFR 390.5) operated in interstate commerce.

Performance Criteria

The agency would establish new performance requirements concerning the longitudinal, lateral, and vertical accelerations that cargo securement systems must withstand to satisfy the proposed rules. Acceleration is the rate at which the speed or velocity of an object increases and deceleration is the rate at which the velocity decreases. Accelerations are commonly reported as a proportion of the acceleration due to gravity (g). This acceleration is 9.81 meters/second/second (32.3 feet/second/second), which means that the velocity of an object dropped from a high elevation increases by 9.81 meters/second (32.3 feet/second). The FMCSA would require that cargo securement systems be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g deceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

The values chosen are based on the researchers' analysis of previous studies concerning commercial motor vehicle performance. The analysis indicated that the highest deceleration likely for an empty or lightly loaded vehicle with an antilock brake system, all brakes properly adjusted, and warmed to provide optimal braking performance, is in the range of 0.8–0.85 g. However, a typical loaded vehicle would not be expected to achieve a deceleration greater than 0.6 g on a dry road.

The typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range 0.05–0.17 g. Loaded vehicles with a high center of gravity roll over at a lateral acceleration above 0.35 g. Lightly loaded vehicles, or heavily loaded vehicles with a lower center of gravity, may withstand lateral acceleration forces greater than 0.50 g. The FMCSA believes the information presented by the researchers supports the use of the decelerations listed above and requests public comment on this issue.

Safe and Proper Working Condition for Tiedowns

The FMCSA would add new regulatory language requiring that all vehicle structures, systems, parts, and components used to secure cargo must be in proper working order. The agency would also prohibit the use of devices that have visible damage, including but not limited to, cracks, cuts, and deformation. Although these defects are not currently discussed in the FMCSRs, it is understood that the use of damaged tiedowns is a violation. The FMCSA would revise the rule to make it clear that this is a violation.

Standards for Tiedowns

The current FMCSRs incorporate by reference manufacturing standards for certain types of tiedowns including steel strapping, chain, synthetic webbing, wire rope, and cordage. The FMCSA would update its reference to the National Association of Chain Manufacturers' (NACM) Welded Steel Chain Specifications, June 15, 1990,

edition to incorporate by reference the May 1, 1996 version. The agency notes that some of the working load limit values in the 1996 version differ slightly from those in the 1990 version. Also, the 1996 version includes working load limits for a new grade of alloy chain, grade 100. The FMCSA encourages commenters to compare the current table of working load limits in § 393.102 (b) with those in the proposed rule to determine if the different values presented in the 1996 version of the NACM publication would adversely affect their motor carrier operations or make it more difficult to comply with the FMCSRs.

Securement of Intermodal Containers and the Contents of Such Containers

The FMCSA proposes commodity-specific requirements which would apply to intermodal cargo containers. The agency is also proposing specific rules for metal coils transported in intermodal cargo containers. Although the agency does not believe the proposed rules would create difficulties for motor carriers or shippers offering loaded containers for transportation, the agency requests comments concerning actions motor carriers believe they would have to take to ensure compliance when transporting containers from foreign countries.

For example, § 392.9(a) requires drivers to assure themselves that cargo is properly distributed and adequately secured before operating a commercial motor vehicle. Section 392.9(b) requires drivers to examine the cargo and load-securing devices during the trip and make adjustments when necessary to maintain the security of the load. Section 392.9(b) provides an exception for driver's of sealed commercial motor vehicles who have been ordered not to open the vehicle to inspect its cargo, or to drivers of vehicles loaded in a manner that makes inspection of the cargo impracticable. The requirements of § 392.9 when combined with the explicit requirements concerning the securement of the contents inside intermodal containers would make it clear that each motor carrier and each driver must ensure that such loads are properly secured. Unless containers are sealed and motor carriers instructed not to open it for inspection of the cargo, the proposed rules would require an inspection of the loads inside containers. The FMCSA requests comments about motor carriers' ability to inspect the contents of the intermodal containers they typically transport. The FMCSA also requests comments on whether the cargo securement methods typically used by shippers of intermodal containers would comply with the proposed rules.

Direct Versus Indirect Tiedowns

The FMCSA would adopt the North American Cargo Securement Standard Model Regulations provision concerning direct and indirect tiedowns. The agency would continue to require that the aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. However, instead of determining the aggregate working load limit by simply adding up the working load limit of all the tiedowns being used, motor carriers would have to determine whether the tiedown is a direct or indirect tiedown, and make appropriate adjustments in the calculation. When direct tiedowns are used, the aggregate working load limit would be the sum of:

(1) One-half of the working load limit of each direct tiedown that is connected between the motor vehicle and the article or cargo; and

(2) The working load limit of each direct tiedown that is attached to the vehicle, passes through or around the cargo, or is attached to it, and again to the vehicle.

When indirect tiedowns are used, the aggregate working load limit of all indirect tiedowns would be the sum of the working load for each tiedown which goes from one part of the vehicle, over an article, to another part of the vehicle.

The FMCSA notes that this approach differs significantly from the current regulations, which do not distinguish between direct and indirect tiedowns. The agency believes the proposed change would require motor carriers to learn a new way of determining compliance with tiedown provision of the cargo securement rules. However, the change is not so great that it would be difficult to master the proposed rules. The agency requests comments on this issue.

Front End Structures on CMVs

Although the model regulations do not include a provision concerning front end structures (*i.e.,* headerboards) used as part of a cargo securement system, the FMCSA proposes to retain its current front-end structure rules for CMVs. The FMCSA would, however, revise its current rule (§ 393.106) by changing the applicability to cover CMVs transporting cargo that is in contact with the front-end structure of the vehicle. By contrast, the current rule establishes requirements for, and requires that vehicles be equipped with, front-end structures irrespective of whether the device is being used as part of a cargo securement system.

The current rules emphasize occupant protection rather than cargo securement. It is expected that cargo that is not braced against a front-end structure could shift forward, and the structure would prevent the load from penetrating the driver's compartment. While this concept may have merit for certain types of cargo, the FMCSA believes the best way to ensure driver safety is to have tougher standards to prevent the cargo from shifting forward. For example, if the vehicle is transporting metal coils, once the load begins to move forward, it is unlikely that a front-end structure would save the driver. The FMCSA requests comments on whether the agency should include revised front-end structure requirements in its cargo securement regulations.

Specific Securement Requirements by Commodity Type

The FMCSA would adopt detailed requirements for the securement of the following commodities: Logs; dressed lumber; metal coils; paper rolls; concrete pipe; intermodal containers; automobiles, light trucks and vans; heavy vehicles, equipment and machinery; flattened or crushed vehicles; roll-on/roll-off containers; and large boulders. During public meetings concerning the development of the model regulations, participants said that these commodities cause the most disagreement between industry and enforcement agencies as to what is required for proper securement.

The FMCSA notes that each of these commodities must be properly secured under the current performance-based cargo securement rules. However, with the exception of metal coils, there is no detailed guidance for motor carriers and enforcement officials. The agency believes that accidents may be prevented through the establishment of much more detailed rules that clearly spell out what is required to achieve the desired level of safety. The rules would eliminate confusion about what constitutes an acceptable cargo securement system.

Provisions of the Model Regulations That Are Not Being Adopted

Generally, the FMCSA would not adopt provisions of the model regulations that are inconsistent with the agency's approach to establishing performance-based rules. Two specific aspects of the model rules that were considered inconsistent are: (1) Requirements for specific types or grades of securement devices; and (2)

rules requiring tiedowns to be positioned at certain angles irrespective of the practicability of doing so.

Other Issues Under Consideration

There are a number of issues that were discussed during the development of the model regulations, and are included in the model regulations but are not included in the proposed rules. The FMCSA did not include proposed regulatory text concerning these issues because the agency does not believe there is sufficient accident data or information to adequately assess the costs and benefits at this time.

Prohibition on the Use of Unmarked Tiedowns

Among those issues, a prohibition on the use of unmarked tiedown devices was considered by participants in the harmonization group meetings. Many participants believe that it is important that all tiedown devices have a working load limit rating marked on the device, or some form of standardized marking which could be used to determine the working load limit. The FMCSA agrees with this principle.

The use of unmarked tiedowns would not be a cause for concern if all such tiedowns of the same size and general appearance were the same grade or strength. The FMCSA has no facts indicating that this is the case. While many manufacturers have some form of marking, others may choose, for whatever reason, not to mark their products. If unmarked tiedowns of varying grades are readily available, motor carriers could unknowingly violate the current rule and the proposed rule by failing to have an adequate number of securement devices. The consequences for a load such as metal coils could be fatal to other motorists.

The risks of such an accident could be greatly minimized by prohibiting motor carriers from using unmarked tiedowns. Before doing so, the FMCSA would have to quantify the potential economic burden on the motor carrier industry and those involved with the manufacture, sale, and distribution of unmarked securement devices. Since the FMCSA has no reliable information on the number of manufacturers, distributors, and retailers of unmarked tiedowns, the quality or strength of such devices, or the amount of these tiedowns currently in use by motor carriers and in retailers' stock, it would be inappropriate to propose a prohibition at this time. However, in view of the potential safety hazards of motor carriers misidentifying unmarked tiedowns, the FMCSA proposes that all unmarked welded steel chain be considered to have a working load limit equal to that of grade 30 proof coil, and other types of unmarked tiedowns be considered to have a working load limit equal to the lowest rating for that type in the table of working load limits. The FMCSA specifically requests comments on this issue.

Mandatory Rating and Marking of Anchor Points

Many of the participants in the harmonization group meetings believe it is important that anchor points on semitrailers and trailers be marked with a working load limit. Some believe that anchor points on certain semitrailers and trailers should be required to meet minimum strength requirements similar to Transport Canada's Canadian Motor Vehicle Safety Standard No. 905. While the FMCSA agrees with the principle of rating and marking anchor points, the agency does not believe it is appropriate to propose such requirements at this time. Although the TTMA has established a recommended practice, ''RP 47–99, Testing, Rating, and Labeling Platform and Van Trailers for Cargo Securement Capability'' June 1, 1999, concerning test procedures and general performance specifications for tiedown anchor points, front-end structures, and sidewall structures, the FMCSA does not have any information on the extent to which trailer manufacturers follow these recommendations. As the FMCSA gathers information about the extent to which manufacturers follow the recommended practices, the agency will consider incorporating by reference the TTMA's recommended practice. The agency would have to be certain that newly manufactured trailers satisfied the guidelines in the recommended practice and that motor carriers would not be prohibited from using suitable semitrailers and trailers solely on the basis that the vehicle lacked a rating and marking of the anchor points. Based on the anecdotal information available to date, the vast majority of cargo-securement related accidents do not involve problems with the anchor points. The majority of these accidents involve an inadequate number of tiedown devices, improper placement of the tiedowns, or other factors unrelated to the design or performance capability of the anchor points.

The agency requests comments on the marking and rating of anchor points and information from enforcement officials and others who are aware of accidents involving the failure of an anchor point.

Development of Training Program

The agencies and organizations participating in the North American Cargo Securement Program have established a Training and Education Committee responsible for developing a training package for motor carriers and enforcement officials to ensure that the model regulations now being considered for adoption throughout North America are understood by all affected parties. The training package would cover all of the requirements in the model regulations, and to some extent, best practices for securing cargo. The training materials would be used to help motor carriers better understand how to properly secure different types of cargo and to ensure they are aware of what is required. Enforcement officials could also use the training material to ensure that they have an understanding of the new requirements. It is anticipated that the training materials would be completed and available to the public from the FMCSA before the effective date of the final rule. The FMCSA would post publications on its website to assist individuals with Internet access. The FMCSA would also consider making copies of the training materials available through the U.S. Department of Commerce's National Technical Information Service.

Proposed Implementation Date

Depending on the comments received in response to this notice of proposed rulemaking, the FMCSA intends to publish a final rule in 2001 with an effective date as close as possible to July 1, 2001. This is the date that jurisdictions involved in the development of model regulations have agreed to use as a target for adoption of the new rules. The FMCSA believes this time frame is appropriate and would provide motor carriers and enforcement officials sufficient time to prepare for the transition from the current requirements to rules compatible with the model regulations. The agency requests comments on this issue.

Request for Comments

The FMCSA is requesting comments on all aspects of the proposed revision of the cargo securement regulations. Although the FMCSA's goal is to adopt most of the provisions in the North American Cargo Securement Standard Model Regulations, the agency does not intend to do so without considering all public comments. If the comments received indicate that certain portions of the proposal may need to be reconsidered or modified, the agency will take appropriate action. The agency

is concerned first and foremost with improving its cargo securement regulations for the purpose of preventing accidents, injuries, and fatalities.

The FMCSA believes its safety objectives can be achieved while harmonizing its cargo securement regulations with those of Canada and Mexico. Commenters are encouraged to compare the North American Cargo Securement Standard Model Regulations with the proposed regulatory language, and the current regulations, and provide the agency with any information they believe is relevant to this issue.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. Although the agency preliminarily determined at the ANPRM stage that this rulemaking is significant under Department of Transportation policies and procedures, the agency has held a number of public meetings, completed a review of the comments submitted in response to the ANPRM, and now believes the rulemaking is not DOT-significant.

The FMCSA received 10 comments to the public docket. While each docket comment is important to the agency, this small number of comments does not suggest a level of public interest that would warrant a ''significant'' classification. Also, based on the information currently available, the cost to the motor carrier industry for compliance with the proposed rules, and the cost to the States for adopting and enforcing the new requirements would be far less than the $100,000,000 threshold used as one of the factors in determining the significance of a rulemaking.

This rule would require that motor carriers operating in interstate commerce comply with improved cargo securement regulations based on the following: (1) The results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings. Generally, the proposed revision would require motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from, CMVs, and how calculations are done. In some instances, the proposed changes would require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes.

The agency believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times. The proposal would allow motor carriers to continue using those tiedowns provided the devices meet the applicable manufacturing standards currently incorporated by reference in § 393.102 (b).

Most of the costs associated with this rulemaking are believed to be associated with the training of drivers, motor carrier employees responsible for loading CMVs, and enforcement officials to ensure that they understand the requirements being considered. The FMCSA believes the proposed rule concerning the distinction between direct and indirect tiedowns under § 393.106 is the only portion of the rulemaking that differs significantly from the technical concepts in the current rules and the best practices of the motor carrier industry, such that training may be desirable for some individuals. It is more likely than not that compliance with the remainder of the proposed regulations could be achieved with much less training than may be necessary to master § 393.106. This is because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

With regard to costs to the States to train inspectors, the agency is working with its State and Provincial partners to develop training materials that could be used to minimize the costs for the enforcement community and the motor carrier industry. For States participating in the Motor Carrier Safety Assistance Program (MCSAP), training costs are considered an eligible expense. This means the States could receive Federal funds to help cover the costs of training their roadside inspectors. Therefore, based upon the information above, the agency estimates that the economic impact associated with this rulemaking action would be minimal and a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that this rule would affect a substantial number of small entities but would not have a significant impact on them.

Generally, the proposed revision would require motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from CMVs. In some instances, the proposed changes would require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes. However, the rulemaking would not require motor carriers to purchase new equipment.

The FMCSA believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times. The agency believes the number of tiedowns on board and the strength of these devices are usually sufficient to secure whatever types of loads the motor carrier is transporting, or intends to transport. The cargo securement problems typically observed during roadside inspections of flatbed trailers are ones in which motor carriers do not use enough of the tiedowns that they already have on board their vehicles. In the case of van type trailers, the problem is that some motor carriers do not use any securement devices to prevent loads from shifting. Therefore, the FMCSA believes that motor carriers already have all the hardware they need to comply with the proposed changes. The challenge for motor carriers would be to learn how to properly use tiedown devices to further reduce the occurrence of cargo securement-related accidents.

Motor carriers are currently required to use tiedown devices that meet applicable manufacturing standards incorporated by reference in § 393.102(b). Under the proposed rulemaking, the agency would continue to require motor carriers to use only tiedown devices that meet manufacturing standards currently specified § 393.102(b). If the tiedowns are in safe and proper condition, and meet the applicable manufacturing standards, use of the devices would not be prohibited by this rulemaking.

As indicated above, additional costs could be associated with training of motor carrier employees responsible for loading CMVs, drivers, and enforcement officials to ensure that they understand the requirements being considered. The FMCSA believes the proposed rule concerning the distinction between direct and indirect tiedowns under § 393.106 is the only portion of the rulemaking that differs significantly from the technical concepts in the current rules and the best practices of the motor carrier industry, such that training may be desirable for some

individuals. It is more likely than not that compliance with the remainder of the proposed regulations could be achieved with much less training than may be necessary to master § 393.106. This is because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

For motor carriers that provide training for their drivers, the costs would vary with the number of hours for training, and the number of drivers being trained. At a minimum, training costs would include wages for the drivers. The FMCSA reviewed earnings information from the U.S. Department of Labor. The FMCSA used the ''Occupational Outlook Handbook,'' 2000–01 Edition, Bulletin 2520. The median hourly earnings of drivers of light and heavy trucks were $11.67 in 1998. The middle 50 percent earned between $8.80 and $15.57 an hour. The lowest 10 percent earned less than $6.51 and the highest 10 percent earned more than $19.14 an hour.

If a motor carrier provided one hour of training for 10 drivers in the middle 50 percent, the cost would be $155.70 (10 drivers × $15.57 an hour per driver × 1 hour) in wages for the drivers to attend training, plus the cost for the instructor and course materials. If the training for the same group of drivers was expanded to four hours the cost would be $622.80 (10 drivers × $15.57 an hour per driver × 4 hours) in wages for the drivers to attend training, plus the cost for the instructor, and course materials. If the drivers earned $20 an hour, the costs for the group of drivers to attend class for 4 hours would be $800. These examples indicate how the costs per motor carrier could vary greatly depending on the number of drivers to be trained, and the amount of training required.

The FMCSA cannot determine at this time the amount of training drivers and other motor carrier employees may need. However, the agency estimates that for a small entity employing 10 drivers the costs would not exceed $1,000 ($800 for drivers' wages + $200 for the instructor and course materials). The agency believes the economic impact on such motor carriers of these training costs would be minimal. The agency requests comments on this issue.

Accordingly, the FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (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.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This final rule does not impose additional costs or burdens on the States.

List of Subjects

49 CFR Part 392

Highway safety, Motor carriers.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 392—[AMENDED]

1. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31502; and 49 CFR 1.73.

2. Section 392.9 is revised to read as follows:

§ 392.9 Inspection of cargo, cargo securement devices and systems.

(a) *General.* A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.142 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices periodically during the course of transportation and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle. A periodic reexamination and any necessary adjustments must be made—

(i) When the driver makes a change of his/her duty status; or

(ii) After the commercial motor vehicle has been driven for 3 hours; or

(iii) After the commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

PART 393—[AMENDED]

3. Revise the authority citation for part 393 to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

4. Amend § 393.5 to add the following definitions in alphabetical order:

§ 393.5 Definitions.

* * * * *

Aggregate working load limit. The summation of the working load limits or restraining capacity of all devices used to secure an article on a vehicle.

* * * * *

Anchor point. Part of the structure, fitting or attachment on a vehicle or cargo to which a tiedown is attached.

* * * * *

Bell pipe concrete. Pipe whose flanged end is of larger diameter than its barrel.

Blocking. A structure, device or another substantial article placed against or around an article to prevent horizontal movement of the article.

Bracing. A structure, device, or another substantial article placed against an article to prevent it from tipping, that may also prevent it from shifting.

* * * * *

Direct tiedown. A tiedown that is intended to provide direct resistance to potential shift of an article.

* * * * *

Frame vehicle. A vehicle with skeletal structure fitted with one or more bunk units for transporting logs. A bunk unit consists of a U-shaped front and rear bunks that together cradle logs. The bunks are welded, gusseted or otherwise firmly fastened to the vehicle's main beams, and are an integral part of the vehicle.

Friction mat. A device placed between the deck of a vehicle and cargo, or between articles of cargo, intended to provide greater friction than exists naturally between these surfaces.

* * * * *

g. The acceleration due to gravity, 32.2 ft/sec^2 (9.823 m/sec^2).

* * * * *

Hook-lift container. A specialized container, primarily used to contain and transport materials in the waste, recycling, construction/demolition and scrap industries, which is used in conjunction with specialized vehicles, in which the container is loaded and unloaded onto a tilt frame body by an articulating hook-arm.

* * * * *

Indirect tiedown. A tiedown whose tension is intended to increase the pressure of an article or stack of articles on the deck of the vehicle.

Integral securement system. A system on certain roll-on/roll-off containers and hook-lift containers and their related transport vehicles in which compatible front and rear hold down devices are mated to provide securement of the complete vehicle and its cargo.

* * * * *

Longwood. All logs that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

* * * * *

Rail vehicle. A vehicle whose skeletal structure is fitted with stakes at the front and rear to contain logs loaded crosswise.

* * * * *

Shortwood. All logs typically up to 4.9 m (16 feet) long. Such logs are often described as cut-up logs, cut-to-length logs, bolts or pulpwood. Shortwood may be loaded lengthwise or crosswise, though that loaded crosswise is usually no more than 2.6 m (102 inches) long.

* * * * *

Sided vehicle. A vehicle whose cargo compartment is enclosed on all four sides by walls of sufficient strength to contain cargo, where the walls may include latched openings for loading and unloading, and includes vans, dump bodies, and a sided intermodal container carried by a vehicle.

* * * * *

Tiedown. A combination of securing devices which forms an assembly that attaches cargo to, or restrains cargo on, a vehicle or trailer, and is attached to anchor point(s).

Tractor-pole trailer. A combination vehicle that carries logs lengthwise so that they form the body of the vehicle. The logs are supported by a bunk located on the rear of the tractor, and another bunk on the skeletal trailer. The tractor bunk may rotate about a vertical axis, and the trailer may have a fixed, scoping, or cabled reach, or other mechanical freedom, to allow it to turn.

* * * * *

Void filler. Material used to fill a void between articles of cargo and the structure of the vehicle that has sufficient strength to prevent movement of the articles of cargo.

* * * * *

Well. The depression formed between two cylindrical articles when they are laid with their eyes horizontal and parallel against each other.

* * * * *

Working load limit (WLL). The maximum load that may be applied to a component of a cargo securement system during normal service, usually assigned by the manufacturer of the component.

5. Subpart I of part 393 is revised to read as follows:

Subpart I—Protection Against Shifting and Falling Cargo

Sec.

393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?
393.102 What are the minimum performance criteria for cargo securement devices and systems?
393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?
393.106 What are the general requirements for securing cargo against shifting or falling?
393.108 How is the working load limit of a tiedown determined?
393.110 What else do I have to do to determine the minimum number of tiedowns?

393.112 What is the strength required for load binders and associated hardware?
393.114 What is the minimum strength of an attachment point on a vehicle?
393.116 What is the minimum strength for a winch or fastening device?
393.118 Must a tiedown be adjustable?
393.120 What are the requirements for front end structures used as part of a cargo securement system?

Specific Securement Requirements by Commodity Type

393.122 What are the rules for securing logs?
393.124 What are the rules for securing dressed lumber or similar building products?
393.126 What are the rules for securing metal coils?
393.128 What are the rules for securing paper rolls?
393.130 What are the rules for securing concrete pipe?
393.132 What are the rules for securing intermodal containers?
393.134 What are the rules for securing automobiles, light trucks and vans?
393.136 What are the rules for securing heavy vehicles, equipment and machinery?
393.138 What are the rules for securing flattened or crushed vehicles?
393.140 What are the rules for securing roll-on/roll-off and hook lift containers?
393.142 What are the rules for securing large boulders?

§ 393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) *Applicability.* The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) *Prevention against loss of load.* Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from spilling or falling from the motor vehicle.

(c) *Prevention against shifting of load.* Cargo must be contained or secured in accordance with this subpart to prevent shifting upon or within the vehicle.

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

(a) *Performance criteria.* Cargo securement devices and systems must be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g deceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

(b) *Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle.* Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the cargo if the cargo is not fully contained within the structure of the vehicle.

(c) *Prohibition on exceeding working load limits.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices under the conditions listed in paragraphs (a) and (b) of this section.

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

(a) *General.* All devices and systems used to secure cargo to or within a vehicle must be capable of meeting the performance requirements of § 393.102.

(b) *Prohibition on the use of damaged securement devices.* All vehicle structures, systems, parts, and components used to secure cargo must be in proper working order when used to perform that function and must not have any visible damage, including but not limited to, cracks, cuts, and deformation.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts and associated mounting pockets used to contain or secure cargo must be strong enough to meet the performance criteria of § 393.102.

(d) *Tiedown assemblies.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure cargo to, or in, commercial motor vehicles must conform to the following applicable standards:

An assembly component of . . .	Must conform to . . .
(1) Steel strapping [1] [2]	Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953–91, 1991.[4]
(2) Chain	National Association of Chain Manufacturers' Welded Steel Chain Specifications, May 1, 1996.[4]
(3) Webbing	Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns, 1991.[4]
(4) Wire rope [3]	Wire Rope Technical Board's Wire Rope Users Manual, 2nd rope Edition, November 1985.[4]
(5) Cordage	Cordage Institute rope standard: (i) PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January 1993;[4] (ii) PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August 1992;[4] (iii) CRS–1, Polyester/Polypropylene Composite Rope Specifications, 3-Strand and 8-Strand Standard Construction, May 1979;[4] (iv) NRS–1, Nylon Rope Specifications, 3-Strand and 8-Strand Standard Construction, May 1979;[4] and (v) C–1, Double Braided Nylon Rope Specifications DBN, January 1984.[4]

[1] Steel strapping not marked by the manufacturer with a working load limit will be considered to have a working load limit equal to one-fourth of the breaking strength listed in ASTM D3953–91.

[2] Steel strapping 25.4 mm (1 inch) or wider must have at least two pairs of crimps in each seal and, when an end-over-end lap joint is formed, must be sealed with at least two seals.

[3] Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the manual.

[4] See § 393.7(b) for information on the incorporation by reference and availability of this document.

§ 393.106 What are the general requirements for securing cargo against shifting or falling?

(a) *General.* The rules in this section are applicable to the transportation of all types of cargo, except commodities in bulk that lack structure or fixed shape (e.g., liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.122 through § 393.142. The commodity-specific rules take precedence over the general requirements of this section when

additional requirements are given for a commodity listed in those sections.

(b) *Minimum strength of cargo securement devices and systems.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles.

(1) *Direct tiedowns.* The aggregate working load limit of all direct tiedowns used to restrain an article or articles is the sum of:

(i) One-half of the working load limit of each direct tiedown that is connected between the motor vehicle and the article of cargo; and

(ii) The working load limit of each direct tiedown that is attached to the vehicle, passes through or around the cargo, or is attached to it, and again attached to the vehicle.

(2) *Indirect tiedowns.* The aggregate working load limit of all indirect tiedowns used to restrain an article or articles is the sum of the working load limit for each tiedown which goes from one part of the vehicle, over an article, to another part of the vehicle.

§ 393.108 How is the working load limit of a tiedown determined?

(a) The working load limits of tiedowns may be determined by using either the tiedown manufacturer's markings or by using the tables in this section. The working load limits listed in the tables are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits that differ from the tables, shall be considered to have a working load limit equal to the value for which they are marked.

(b) Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

(c) Welded steel chain which is not marked or labeled to enable identification of its grade or working load limit shall be considered to have a working load limit equal to that for grade 30 proof coil chain.

(d)(1) Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the Wire Rope Users Manual.

(2) Wire which is not marked or labeled to enable identification of its construction type shall be considered to have a working load limit equal to that for 6 × 37, fiber core wire rope.

TABLES TO § 393.108

[Working Load Limits (WLL)]

Chain

Size mm (inches)	WLL in kg (pounds)				
	Grade 30 proof coil	Grade 43 high test	Grade 70 transport	Grade 80 alloy	Grade 100 alloy
1. 7 (1/4)	580 (1,300)	1,180 (2,600)	1,430 (3,150)	1,570 (3,500)	
2. 8 (5/16)	860 (1,900)	1,770 (3,900)	2,130 (4,700)	2,000 (4,500)	2,600 (5,700)
3. 10 (3/8)	1,200 (2,650)	2,450 (5,400)	2,990 (6,600)	3,200 (7,100)	4,000 (8,800)
4. 11 (7/16)	1,680 (3,700)	3,270 (7,200)	3,970 (8,750)		
5. 13 (1/2)	2,030 (4,500)	4,170 (9,200)	5,130 (11,300)	5,400 (12,000)	6,800 (15,000)
6. 16 (5/8)	3,130 (6,900)	5,910 (13,000)	7,170 (15,800)	8,200 (18,100)	10,300 (22,600)
Chain Mark Examples:					
Example 1	PC	HT		T	
Example 2	3	4	7	8	10
Example 3	30	40	70	80	100

Synthetic Webbing

Width mm (inches)	WLL kg (pounds)
45 (1 3/4)	790 (1,750)
50 (2)	910 (2,000)
75 (3)	1,360 (3,000)
100 (4)	1,810 (4,000)

Wire Rope (6 × 37, Fiber Core)

Diameter mm (inches)	WLL kg (pounds)
7 (1/4)	640 (1,400)
8 (5/16)	950 (2,100)
10 (3/8)	1,360 (3,000)
11 (7/16)	1,860 (4,100)
13 (1/2)	2,400 (5,300)
16 (5/8)	3,770 (8,300)
20 (3/4)	4,940 (10,900)
22 (7/8)	7,300 (16,100)
25 (1)	9,480 (20,900)

Manila Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	90 (205)
11 (7/16)	120 (265)
13 (1/2)	150 (315)
16 (5/8)	210 (465)
20 (3/4)	290 (640)
25 (1)	480 (1,050)

Polypropylene Fiber Rope WLL (3–Strand and 8–Strand Constructions)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	180 (400)
11 (7/16)	240 (525)
13 (1/2)	280 (625)
16 (5/8)	420 (925)
20 (3/4)	580 (1,275)
25 (1)	950 (2,100)

Polyester Fiber Rope WLL (3–Strand and 8–Strand Constructions)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	250 (555)
11 (7/16)	340 (750)
13 (1/2)	440 (960)
16 (5/8)	680 (1,500)
20 (3/4)	850 (1,880)
25 (1)	1,500 (3,300)

Nylon Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	130 (278)
11 (7/16)	190 (410)
13 (1/2)	240 (525)
16 (5/8)	420 (935)
20 (3/4)	640 (1,420)
25 (1)	1,140 (2,520)

Double Braided Nylon Rope

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	150 (336)
11 (7/16)	230 (502)
13 (1/2)	300 (655)
16 (5/8)	510 (1,130)
20 (3/4)	830 (1,840)
25 (1)	1,470 (3,250)

Steel Strapping

Width × thickness mm (inches)	WLL kg (pounds)

31.7 × .74 (1¼ × 0.029)	540 (1,190)
31.7 × .79 (1¼ × 0.031)	540 (1,190)
31.7 × .89 (1¼ × 0.035)	540 (1,190)
31.7 × 1.12 (1¼ × 0.044)	770 (1,690)
31.7 × 1.27 (1¼ × 0.05)	770 (1,690)
31.7 × 1.5 (1¼ × 0.057)	870 (1,925)
50.8 × 1.12 (2 × 0.044)	1,200 (2,650)
50.8 × 1.27 (2 × 0.05)	1,200 (2,650)

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) In addition to the requirements of § 393.106, the minimum number of tiedowns required to secure an article or group of articles against movement depends on whether indirect or direct tiedowns are used and the length of the article(s) being secured.

(b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least:

(1) One tiedown for articles 5 feet (1.52 meters) or less in length, and 1,100 pounds (500 kg) or less in weight;

(2) Two tiedowns if the article is:

(i) 5 feet (1.52 meters) or less in length and more than 1,100 pounds (500 kg) in weight; or

(ii) Longer than 5 feet (1.52 meters) but less than or equal to 10 feet (3.04 meters) in length, irrespective of the weight.

(3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

§ 393.112 What is the strength required for load binders and associated hardware?

The strength of load binders and hardware that are part of, or used in conjunction with, a tiedown assembly must be equal to, or greater than, the minimum strength specified for that tiedown assembly in § 393.106.

§ 393.114 What is the minimum strength of an attachment point on a vehicle?

The strength of a hook, bolt, weld, or other connector attaching the tiedown assembly to the commercial motor vehicle and the place and means of mounting the connector must be equal to, or greater than, the minimum strength required by § 393.106 for that tiedown assembly.

§ 393.116 What is the minimum strength for a winch or fastening device?

A winch or other fastening device mounted on a commercial motor vehicle and used in conjunction with a tiedown assembly must have a combined strength equal to or greater than the strength of the tiedown assembly.

§ 393.118 Must a tiedown be adjustable?

A tiedown assembly, associated connectors, and attachment devices must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this section does not apply to the use of steel strapping.

§ 393.120 What are the requirements for front end structures used as part of a cargo securement system?

(a) *Applicability.* The rules in this section are applicable to commercial motor vehicles transporting cargo that is in contact with the front end structure of the vehicle. The front end structure on these cargo-carrying vehicles must meet the performance requirements of this section.

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of cargo being carried on the vehicle, whichever is lower.

(2) The front end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any item of cargo being transported on the vehicle, whichever is narrower.

(c) *Strength.* The front end structure must be capable of withstanding the following horizontal forward static load:

(1) For a front end structure less than 6 feet in height, a horizontal forward static load equal to one-half (0.5) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire portion of the front end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any item of the vehicle's cargo, whichever is less; or

(2) For a front end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire front end structure.

(d) *Penetration resistance.* The front end structure must be designed, constructed, and maintained so that it is capable of resisting penetration by any item of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second, per second. The front end structure must have no aperture large enough to permit any item of cargo in contact with the structure to pass through it.

(e) *Substitute devices.* The requirements of this section may be met by the use of devices performing the same functions as a front end structure, if the devices are at least as strong as, and provide protection against shifting cargo at least equal to, a front end structure which conforms to those requirements.

Specific Securement Requirements by Commodity Type

§ 393. 122 What are the rules for securing logs?

(a) *Applicability.* The rules in this section are applicable to the transportation of logs that are unitized by banding or other comparable means. Loads that consist of no more than four processed logs may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.120. Firewood, stumps, log debris and other such short logs must be transported in a vehicle or container enclosed on both sides, front, and rear and of adequate strength to contain them. Longer logs may also be so loaded. This section applies to transportation of all other logs. A stack of logs that is composed of both shortwood and longwood must be treated as shortwood.

(b) *Components of a securement system.* (1) Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.

(2) All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit.

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes and bolsters to secure the load.

(c) *Use of securement system.* (1) Logs must be solidly packed, and the outer

bottom logs must be in contact with and resting solidly against the bunks, bolsters, or stakes.

(2) Each outside log must touch at least two bunks, bolsters, or stakes, but if one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the end of the stake.

(3) The center of the highest outside log on each side or end must be below the top of each stake.

(4) Each log that is not held in place by contact with other logs or the stakes must be held in place by an indirect tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.

(d) *Frame vehicle(s).* (1) Shortwood loaded lengthwise must be cradled in a bunk unit, and must be secured to the vehicle by at least two indirect tiedowns.

(2) Longwood must be cradled in two or more bunks, and must be secured to the vehicle by at least two indirect tiedowns at locations along the load that provide effective securement.

(3) The aggregate working load limit for all tiedowns securing a stack of logs must be no less than one-sixth the weight of the stack of logs.

(4) Shortwood loaded crosswise must be secured in the same manner as required for rail trucks and trailers.

(e) *Rail vehicle(s).* (1) Logs in the bottom tier of shortwood loaded crosswise must be supported by vehicle structure within 30 cm (12 inches) of each end.

(2) One stack of shortwood loaded crosswise must be secured with at least two indirect tiedowns. These must attach to the vehicle frame at the front and rear of the load, and must cross the load lengthwise.

(3) Where two indirect tiedowns are used, they must be positioned about one-third of the logs' length in from each end of the logs.

(4) A rail vehicle over 10 m (33 feet) long must be fitted with center stakes to divide it into two sections about equal in length. Where a vehicle is so divided, each tiedown must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or may pass through a pulley or equivalent in the middle and be tensioned from one end.

(5) Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.

(6) If two stacks of shortwood can fit side-by-side within the allowable width, they may be so loaded, provided:

(i) There is no space between the two stacks of logs;

(ii) The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;

(iii) The highest log is no more than 2.44 m (8 ft) above the deck; and

(iv) At least one tiedown is used lengthwise across each stack of logs .

(f) *Flatbed vehicle(s).* (1) Shortwood loaded crosswise must be secured in the same manner as required for rail vehicle(s).

(2) Shortwood loaded lengthwise must be contained by stakes.

(3) Each stack of logs must be secured by at least two indirect tiedowns. However, if all logs in any stack are blocked in the front by a headboard strong enough to restrain the load, or another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be about midway between the stakes.

(4) Longwood loaded lengthwise must be contained by stakes.

(5) The aggregate working load limit for all tiedowns must be no less than one-sixth the weight of the stack logs.

(6) Each outside log must be secured by at least two indirect tiedowns.

(g) *Securement of logs transported on pole trailers.* (1) The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.

(2) The front and rear wrappers must be at least 3.04 meters (10 feet) apart.

(3) Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.

(4) Large diameter logs that rise above stakes must be secured to the underlying load with at least two additional wrappers.

§ 393.124 What are the rules for securing dressed lumber or similar building products?

(a) *Applicability.* The rules in this section apply to the transportation of bundles of dressed lumber, packaged lumber, building products such as plywood, gypsum board or other materials of similar shape. Lumber or building products which are not bundled or packaged must be treated as loose items and transported in accordance with §§ 393.100 through 393.120 of this subpart. For the purpose of this section, ''bundle'' refers to packages of lumber, building materials or similar products which are unitized for securement as a single item of cargo.

(b) *Securement of bundles transported using no more than one tier.* (1) Bundles must be placed side by side in direct contact with each other, or a means must be provided to prevent bundles shifting towards each other.

(2) Bundles carried on one tier must be secured in accordance with the general provisions of §§ 393.100 through 393.120.

(c) *Securement of bundles transported using more than one tier.* Bundles carried in more than one tier must be either:

(1) Blocked against lateral movement by stakes on the sides of the vehicle and secured by indirect tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.120; or

(2) Restrained from lateral movement by blocking or high friction devices between tiers and secured by indirect tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.120; or

(3) Placed directly on top of other bundles or on spacers and secured in accordance with the following:

(i) The length of spacers between bundles must provide support to all pieces in the bottom row of the bundle.

(ii) The width of individual spacers must be greater than the height.

(iii) If spacers are comprised of layers of material, the layers must be unitized or fastened together in a manner which ensures that the spacer performs as a single piece of material.

(iv) The arrangement of the tiedowns for the bundles must be:

(A) Secured by indirect tiedowns over the second tier of bundles, or at a height of 1.85 m (6 ft) above the trailer deck, whichever is greater. If the top tiers are less than 1.85 m (6 ft) above the trailer deck, they may be secured in accordance with the general provisions of §§ 393.100 through 393.120; and

(B) Secured by indirect tiedowns over the top tier of bundles, in accordance with the general provisions of §§ 393.100 through 393.120 with a minimum of two indirect tiedowns for bundle(s) longer than 1.52 m (5 ft); or

(C) Secured by indirect tiedowns laid out over each tier of bundles, in accordance with §§ 393.100 through 393.120 using a minimum of two indirect tiedowns over each top bundle(s) longer than 1.52 m (5 ft), in all other circumstances.

§ 393.126 What are the rules for securing metal coils?

(a) *Applicability.* The rules in this section apply to the transportation of one or more metal coils which, individually or together, weigh 2268 kg (5000 pounds) or more. Shipments of metal coils that weigh less than 2268 kg (5000 pounds) may be secured in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Coils with eyes vertical on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* Tiedowns must be arranged in a manner to prevent the coils from tipping in the forward, rearward, and lateral directions. The restraint system must include the following:

(i) At least one indirect tiedown attached diagonally from the left side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the right side of the vehicle or intermodal container (near the rearmost part of the coil);

(ii) At least one indirect tiedown attached diagonally from the right side of the vehicle or intermodal container (near the forward-most part of the coil), across the eye of the coil, to the left side of the vehicle or intermodal container (near the rearmost part of the coil);

(iii) At least one indirect tiedown attached transversely over the eye of the coil; and

(iv) Either blocking and bracing, friction mats or direct tiedowns must be used to prevent longitudinal movement in the forward direction.

(2) *Coils grouped in rows.* For vehicles transporting coils which are grouped and loaded side by side in a transverse or longitudinal row, the coils must be secured by the following:

(i) At least one direct tiedown attached to the front of the row of coils, restraining against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(ii) At least one direct tiedown attached to the rear of the row of coils, restraining against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one indirect tiedown over the top of each coil or transverse row of coils, restraining against vertical motion. Indirect tiedowns going over the top of a coil(s) must be as close as practicable to the eye of the coil and positioned to prevent the tiedown from slipping or becoming unintentionally unfastened while the vehicle is in transit; and

(iv) Direct tiedowns, blocking or bracing must be arranged to prevent shifting or tipping in the forward, rearward and lateral directions.

(c) *Coils with eyes crosswise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* The coil must be secured by the following:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown through its eye, restricting against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container; and

(iii) At least one direct tiedown through its eye, restricting against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container.

(2) *Prohibition on crossing of chains when coils are transported with eyes crosswise.* Attaching direct tiedowns diagonally through the eye of a coil to form an X-pattern when viewed from above the vehicle is prohibited.

(d) *Coils with eyes lengthwise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil—option 1.* The coil must be secured by:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown attached diagonally through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one direct tiedown attached diagonally through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one indirect tiedown transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement in the forward direction.

(2) *An individual coil—option 2.* The coil must be secured by:

(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one direct tiedown attached straight through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), and, whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one direct tiedown attached straight through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one indirect tiedown transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement in the forward direction.

(3) *An individual coil—option 3.* The coil must be secured by:

(i) A means (e.g., timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one indirect tiedown over the top of the coil, located near the forward-most part of the coil;

(iii) At least one indirect tiedown over the top of the coil located near the rearmost part of the coil; and

(iv) Either blocking or friction mats to prevent longitudinal movement in the forward direction.

(4) *Rows of coils.* A transverse row of coils having approximately equal outside diameters must be secured with:

(i) A means (e.g., timbers, chocks or wedges, a cradle, etc.) to prevent each coil in the row of coils from rolling. The means of preventing rolling must support each coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least two indirect tiedowns over the top of each coil or transverse row; and

(iii) Either blocking, bracing or friction mats to prevent longitudinal movement in the forward direction for each coil.

(e) *Coils in a sided vehicle or intermodal container without anchor points.* Metal coils transported in a vehicle with sides or an intermodal container without anchor points must be loaded in a manner to prevent shifting and tipping. The coils must be secured to prevent lateral and longitudinal movement and tipping by the use of friction mats, or a system of blocking and bracing or tiedowns, and either blocking and bracing.

§ 393.128 What are the rules for securing paper rolls?

(a) *Applicability.* The rules in this section apply to shipments of paper rolls which, individually or together, weigh 2268 kg (5000 lb) or more. Shipments of paper rolls that weigh less than 2268 kg (5000 lb), and paper rolls that are unitized on a pallet, may either be secured in accordance with the rules in this section or the requirements of §§ 393.100 through 393.120.

(b) *Rules for paper rolls loaded with eyes vertical in a sided vehicle.* (1) Paper rolls must be placed tightly against the walls of the vehicle, other paper rolls, or other cargo, to prevent movement during transit.

(2) If there are not enough paper rolls in the shipment to reach the walls of the vehicle, lateral movement must be prevented by filling the void, blocking, bracing, tiedowns or friction mats. The paper rolls may also be banded together.

(3) When any void behind a group of paper rolls, including that at the rear of the vehicle, exceeds the diameter of the paper rolls, rearward movement must be prevented by friction mats, blocking, bracing, tiedowns, or banding to other rolls.

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls is not prevented from tipping or falling forwards by vehicle structure or other cargo and it is restrained against forward movement by friction mat(s) alone, and its width is more than 1.75 times its diameter, it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) Otherwise, when a paper roll or the forwardmost roll in groups of rolls that are not prevented from tipping or falling forwards by vehicle structure or other cargo and its width exceeds 1.25 times its diameter it must be prevented from tipping or falling by banding to other rolls, bracing or tiedowns.

(5) If paper rolls are banded together, the rolls must be placed tightly against each other to form a stable group. The bands must be applied tightly, and must be secured so that they cannot fall off the rolls or to the deck.

(6) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(c) *Rules for split loads of paper rolls loaded with eyes vertical in a sided vehicle.* (1) If a paper roll in a split load is not prevented from forward movement by vehicle structure or other cargo, it must be prevented from forward movement by filling the open space, or by blocking, bracing, tiedowns, friction mats, or some combination of these.

(2) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(d) *Rules for stacked loads of paper rolls loaded with eyes vertical in a sided vehicle.* (1) Paper rolls must not be loaded on a layer of paper rolls beneath unless that layer extends to the front of the vehicle.

(2) Paper rolls in the second and subsequent layers must be prevented from forward, rearward or lateral movement by means as allowed for the bottom layer, or by use of a blocking roll from a lower layer.

(3) The blocking roll must be at least 50 mm (2 in) taller than other rolls, or must be raised at least 38 mm (1.5 in) using dunnage.

(4) A roll in the rearmost row of any layer must not be raised using dunnage.

(e) *Rules for securing paper rolls loaded with eyes crosswise in a sided vehicle.* (1) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(2) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(3) The rearmost roll must not be secured using the rear doors of the vehicle or intermodal container, or by blocking held in place by those doors.

(4) If there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle, void fillers, blocking, bracing, friction mats, or tiedowns must be used to prevent the roll from shifting towards either wall.

(f) *Rules for stacked loads of paper rolls loaded with eyes horizontal and crosswise in a sided vehicle.* (1) Rolls must not be loaded in a second layer unless the bottom layer extends to the front of the vehicle.

(2) Rolls must not be loaded in a higher layer unless all wells in the layer beneath are filled.

(3) The foremost roll in each upper layer, or any roll with an empty well in front of it, must be secured against forward movement by:

(i) Banding it to other rolls, or

(ii) Blocking against an adequately secured eye-vertical blocking roll resting on the floor of the vehicle which is at least 1.5 times taller than the diameter of the roll being blocked, or

(iii) Placing it in a well formed by two rolls on the lower row whose diameter is equal to or greater than that of the roll on the upper row.

(4) The rearmost roll in each upper layer must be secured by banding it to other rolls if it is located in either of the last two wells formed by the rearmost rolls in the layer below.

(5) Rolls must be secured against lateral movement by the same means allowed for the bottom layer when there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle.

(g) *Paper rolls loaded with the eyes lengthwise in a sided vehicle.* (1) Each roll must be prevented from forward movement by contact with vehicle structure, other cargo, blocking or tiedowns.

(2) Each roll must be prevented from rearward movement by contact with other cargo, blocking, friction mats or tiedowns.

(3) The paper rolls must be prevented from rolling or shifting laterally by contact with the wall of the vehicle or other cargo, or by chocks, wedges or blocking of adequate size.

(4) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(h) *Rules for stacked loads paper rolls loaded with the eyes lengthwise in a sided vehicle.* (1) Rolls must not be loaded in a higher layer if another roll will fit in the layer beneath.

(2) An upper layer must be formed by placing paper rolls in the wells formed by the rolls beneath.

(3) A roll in an upper layer must be secured against forward and rearward movement by any of the means allowed for the bottom layer, by use of a blocking roll, or by banding to other rolls.

(i) *Paper rolls loaded on a flatbed vehicle or in a curtain-sided vehicle*—(1) *Paper rolls with eyes vertical or with eyes lengthwise.* (i) The paper rolls must be loaded and secured as described for a sided vehicle, and the entire load must be secured by tiedowns in accordance with the requirements of §§ 393.100 through 393.120.

(ii) Stacked loads of paper rolls with eyes vertical are prohibited.

(2) *Paper rolls with eyes crosswise.* (i) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(ii) Chocks, wedges or blocking must be held securely in place by some means in addition to friction so that they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(iii) Transverse or longitudinal tiedowns must be used to prevent lateral movement.

§ 393.130 What are the rules for securing concrete pipe?

(a) *Applicability.* (1) The rules in this section apply to the transportation of concrete pipe on flatbed trailers and vehicles, and lowboy trailers.

(2) Concrete pipe bundled tightly together into a single rigid article that has no tendency to roll, and concrete pipe loaded in a sided vehicle or container must be secured in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Aggregate working load limits for tiedowns.* The aggregate working load limit of all tiedowns on any group of pipe must not be less than half the total weight of all pipe in the group.

(c) *Blocking.* (1) Blocking may be one or more pieces placed symmetrically about the center of a pipe.

(2) One piece must extend at least half the distance from the center to each end of the pipe, and two pieces must be placed on the opposite side, one at each end of the pipe.

(3) Blocking must be placed firmly against the pipe, and must be secured to prevent it moving out from under the pipe.

(4) Timber blocking must have minimum dimensions of at least 10×15 cm (4×6 in).

(d) *Arranging the load*—(1) *Pipe of different diameter.* If pipe of more than one diameter are loaded on a vehicle, groups must be formed that consist of pipe of only one size, and each group must be separately secured.

(2) *Arranging a bottom tier.* The bottom tier must be arranged to cover the full length of the vehicle, or as a partial tier in one group or two groups.

(3) *Arranging an upper tier.* Pipe must be placed only in the wells formed by adjacent pipes in the tier beneath. An upper tier must not be started unless all wells in the tier beneath are filled.

(4) *Arranging the top tier.* The top tier must be arranged as a complete tier, a partial tier in one group, or a partial tier in two groups.

(5) *Arranging bell pipe.* (i) Bell pipe must be loaded on at least two longitudinal spacers of sufficient height to ensure that the bell is clear of the deck.

(ii) Bell pipe loaded in one tier must have the bells alternating on opposite sides of the vehicle.

(iii) The ends of consecutive pipe must be staggered, if possible, within the allowable width, otherwise they must be aligned.

(iv) Bell pipe loaded in more than one tier must have the bells of the bottom tier all on the same side of the vehicle.

(v) Pipe in every upper tier must be loaded with bells on the opposite side of the vehicle to the bells of the tier below.

(vi) If the second tier is not complete, pipe in the bottom tier which do not support a pipe above must have their bells alternating on opposite sides of the vehicle.

(e) *Securing pipe with an inside diameter up to 1,143 mm (45 in)*—(1) *Stabilizing the bottom tier.* (i) The bottom tier must be contained longitudinally at each end by blocking, vehicle end structure, stakes, a locked pipe unloader, or other equivalent means.

(ii) Other pipe in the bottom tier may also be held in place by blocks and/or wedges.

(iii) Every pipe in the bottom tier must also be held firmly in contact with the adjacent pipe by direct tiedowns though the front and rear pipes.

(iv) The direct tiedown on the front pipe of the bottom tier must run aft at an angle not more than 45 degrees with the horizontal, whenever practicable.

(v) The direct tiedown on the rear pipe of the bottom tier must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(2) *Use of tiedowns.* (i) Direct tiedowns through the pipe must be chains.

(ii) Longitudinal indirect tiedowns may be chain or wire rope.

(iii) Pipe may be secured individually with a direct tiedown through the pipe.

(iv) A direct tiedown through a pipe in an upper tier is considered to secure all those pipe beneath on which that tiedown causes pressure.

(v) If each pipe is not secured individually with a tiedown, then:

(A) Two indirect tiedowns must be placed longitudinally over the group of pipes; and

(B) One transverse tiedown (direct or indirect) must be used for every 3.0 m (10 ft) of load length. The transverse tiedowns may be placed through a pipe, or over both longitudinal tiedowns between two pipes on the top tier.

(vi) If the first pipe of a group in the top tier is not at the front of the tier beneath, it must be secured by an additional direct tiedown that runs rearward at an angle not more than 45 degrees to the horizontal, whenever practicable. This direct tiedown must pass either through the front pipe of the upper tier, or outside it and over both longitudinal indirect tiedowns.

(vii) If the last pipe of a group in the top tier is not at the rear of the tier beneath, it must be secured by an additional direct tiedown that runs forward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the rear pipe of the upper tier or outside it and over both longitudinal tiedowns.

(f) *Securing large pipe, with an inside diameter over 1143 mm (45 in).* (1) The front pipe and the rear pipe must be secured by blocking or wedges.

(2) The blocking or wedges must be pushed firmly under the pipe.

(3) Each pipe must be secured by tiedowns through the pipe.

(4) Direct tiedowns are required through each pipe in the front half of the load, which includes the middle one if there are an odd number, and must run rearward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(5) Direct tiedowns are required through each pipe in the rear half of the load, and must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable, to hold each pipe firmly in contact with adjacent pipe.

(6) If the front or rear pipe is not also in contact with vehicle end structure, stakes, a locked pipe unloader, or other equivalent means, at least two direct tiedowns must be used through that pipe.

(g) *Conditions of low friction.* Ice must be removed from concrete pipe before it is loaded.

§ 393.132 What are the rules for securing intermodal containers?

(a) *Applicability.* The rules in this section apply to the transportation of intermodal containers. Cargo contained within an intermodal container must be secured in accordance with the provisions of §§ 393.100 through 393.120 or, if applicable, the commodity specific rules of this part.

(b) *Rules for transporting intermodal containers on container chassis vehicle(s).* (1) The intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

(2) The securement devices must restrain the container from moving more than 1.27 cm (½ in) forward, more than 1.27 cm (½ in) aft, more than 1.27 cm (½ in) to the right, more than 1.27 cm (½ in) to the left, or more than 2.54 cm (1 in) vertically.

(3) The front and rear of the container must be secured independently.

(c) *Rules for transporting intermodal containers on vehicles other than container chassis vehicle(s).* (1) All lower corners of the intermodal container must rest upon the vehicle, or the corners must be supported by a structure capable of bearing the weight of the container and that support structure must be independently secured to the motor vehicle.

(2) All lower corners of intermodal containers must be secured to the vehicle by chains, wire rope, or integral locking devices.

(3) The front and rear of the container must be secured independently.

(4) Each chain, wire rope, or integral locking device must be attached to the container in a manner that prevents it from being unintentionally unfastened while the vehicle is in transit.

§ 393.134 What are the rules for securing automobiles, light trucks and vans?

(a) *Applicability.* The rules in this section apply to the transportation of automobiles, light trucks, and vans which individually weigh 4,500 kg. (10,000 lb) or less. Vehicles which are heavier than 4,500 kg (10,000 lb) must be secured in accordance with the provisions of § 393.136 of this part.

(b) Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two direct tiedowns.

(c) Direct tiedowns that are designed to be affixed to the structure of the automobile, light truck, or van shall use the mounting points on those vehicles that have been specifically designed for that purpose.

(d) Direct tiedowns that are designed to fit over or around the wheels of an automobile, light truck, or van shall provide restraint in the lateral, longitudinal and vertical directions.

(e) Edge protectors are not required for synthetic webbing at points where the webbing comes in contact with the tires.

§ 393.136 What are the rules for securing heavy vehicles, equipment and machinery?

(a) *Applicability.* The rules in this section apply to the transportation of heavy vehicles, equipment and machinery which operate on wheels or tracks, such as front end loaders, bulldozers, tractors, and power shovels and which individually weigh 4,536 kg (10,000 lb.) or more. Vehicles, equipment and machinery which is lighter than 4,536 kg (10,000 lb.) may also be secured in accordance with the provisions of this section, with § 393.134, or in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Preparation of equipment being transported.* (1) Accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.

(2) The parking brake on the equipment being transported must be engaged, where applicable.

(3) Articulated vehicles shall be restrained in a manner that prevents articulation while in transit.

(c) *Rules for transporting heavy vehicles, equipment or machinery with crawler tracks or wheels.* (1) Heavy equipment or machinery with crawler tracks must be restrained against movement in the lateral, forward, rearward, and vertical direction using a minimum of four direct tiedowns.

(2) The direct tiedown must be affixed at the front and rear of the vehicle, or mounting points on the vehicle that have been specifically designed for that purpose.

§ 393.138 What are the rules for securing flattened or crushed vehicles?

(a) *Applicability.* The rules in this section apply to the transportation of vehicles such as automobiles, light trucks, and vans which have been flattened or crushed.

(b) *General requirements.* Flattened or crushed vehicles must be transported so that:

(1) The cargo does not shift upon the transport vehicle while in transit; and

(2) Loose parts from the flattened vehicles do not become dislodged and fall from the transport vehicle.

(c) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited.

(d) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have:

(1) Containment walls or comparable means on four sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and lateral directions; or

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and

which block against movement of the cargo in the forward, rearward and the lateral direction for which there is no containment wall or comparable means, and

(ii) A minimum of two indirect tiedowns are required per vehicle stack; or

(3)(i) Containment walls on two sides which extend to the full height of the load and which block against movement of the cargo in the forward and rearward directions, and

(ii) Three indirect tiedowns are required per vehicle stack; or

(4) A minimum of four indirect tiedowns per vehicle stack.

(e) *Containment of loose parts.* (1) Measures must be taken to ensure that loose parts from flattened or crushed vehicles do not fall from the transport vehicle while in transit.

(2) Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent loose parts from falling from all four sides of the vehicle which extends to the full height of the cargo.

(3) The means used to contain loose parts may consist of structural walls, sides or sideboards, or suitable covering material, alone or in combinations.

(4) The use of synthetic material for containment of loose parts is permitted.

§ 393.140 What are the rules for securing roll-on/roll-off and hook lift containers?

(a) *Applicability.* The rules in this section apply to the transportation of roll-on/roll-off and hook lift containers.

(b) *General requirements.* Any container carried on a vehicle which is not equipped with an integral securement system must be:

(1) Blocked against forward movement by the lifting device, stops, a combination of both or other suitable restraint mechanism;

(2) Secured to the front of the vehicle by the lifting device or other suitable restraint against lateral and vertical movement;

(3) Secured to the rear of the vehicle with at least one of the following mechanisms:

(i) One indirect tiedown that secures the side rails of the vehicle chassis to and the container chassis at the same time;

(ii) Two tiedowns installed lengthwise, each securing one side of the container to one of the vehicle's side rails; or

(iii) Two hooks, or an equivalent mechanism, securing both sides of the container to the vehicle chassis at least as effectively as the tiedowns in the two previous items.

(4) The mechanisms used to secure the rear end of a roll-on/roll off or hook lift container must be installed no more than two meters (6 ft 7 in) from the rear of the container.

(5) In the event that one or more of the front stops or lifting devices are missing, damaged or not compatible, additional manually installed tiedowns must be used to secure the container to the vehicle, providing the same level of securement as the missing, damaged or incompatible components.

§ 393.142 What are the rules for securing large boulders?

(a) *Applicability.* (1) The rules in this section are applicable to the transportation of any large piece of natural, irregularly shaped rock weighing in excess of 5,000 kg (11,000 lb.) or with a volume in excess of 2 cubic-meters on an open vehicle, or in a vehicle whose sides are not designed and rated to contain such cargo.

(2) Pieces of rock weighing more than 100 kg (220 lb.), but less than 5,000 kg (11,000 lb.) must be secured, either in accordance with this section, or in accordance with the provisions of §§ 393.100 through 393.120, including:

(i) Rock contained within a vehicle which is designed to carry such cargo; or

(ii) Secured individually by tiedowns, provided each piece can be stabilized and adequately secured.

(3) Rock which has been formed or cut to a shape and which provides a stable base for securement must also be secured, either in accordance with the provisions of this section, or in accordance with the provisions of §§ 393.100 through 393.120.

(b) *Rules concerning positioning of boulders on the vehicle.* (1) Each boulder must be placed with its flattest and/or largest side down.

(2) Each boulder must be supported on at least two pieces of hard wood blocking at least 10 cm × 10 cm (4 inches × 4 inches) side dimensions extending the full width of the boulder.

(3) Hardwood blocking pieces must be placed as symmetrically as possible under the boulder and should support at least three-fourths of the length of the boulder.

(4) If the flattest side of a boulder is rounded or partially rounded, so that the boulder may roll, it must be placed in a crib made of hardwood timber fixed to the deck of the vehicle so that the boulder rests on both the deck and the timber, with at least three well-separated points of contact that prevent its tendency to roll in any direction.

(5) If a boulder is tapered, the narrowest end must point towards the front of the vehicle.

(c) *Rules concerning the use of tiedowns.* (1) Only chain may be used as tiedowns to secure large boulders.

(2) Indirect tiedowns which are in direct contact with the boulder should, where possible, be located in valleys or notches across the top of the boulder, and must be arranged to prevent sliding across the rock surface.

(d) *Options for arranging tiedowns.* There are three arrangements of tiedowns that may be used, depending upon the shape of the boulder:

(1) *Cubic shaped boulder.* (i) The boulder must be secured individually with at least two chain tiedowns placed transversely across the vehicle.

(ii) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(iii) The tiedowns must be placed as closely as possible to the wood blocking used to support the boulder.

(2) *Irregular shaped boulder—with stable base.* (i) The boulder must be secured individually with at least two chain tiedowns forming an ''X'' pattern over the boulder.

(ii) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(iii) The tiedowns must pass over the center of the boulder and must be attached to each other at the intersection by a shackle or other connecting device.

(3) *Irregular shaped boulder—with unstable base.* Each boulder must be secured by a combination of chain tiedowns as follows:

(i) One chain must surround the top of the boulder (at a point between one-half and two-thirds of its height). The working load limit of the chain must be at least half the weight of the boulder.

(ii) Four chains must be attached to the surrounding chain and the vehicle to form a blocking mechanism which prevents any horizontal movement. Each chain must have a working load limit of at least one-fourth the weight of the boulder. Whenever practicable, the angle of the chains must not exceed 45 degrees from the horizontal.

Issued on: December 8, 2000.

Brian M. McLaughlin,

Acting Assistant Administrator.

[FR Doc. 00–31919 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 65, No. 243

Monday, December 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–918–01–1610–DH–UCRB]

Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of a final environmental impact statement (EIS) and proposed decision for the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

SUMMARY: The Forest Service and Bureau of Land Management have developed a scientifically sound, ecosystem-based management strategy for certain lands under their jurisdiction east of the Cascade crest in Oregon and Washington and in the Columbia River Basin in Idaho and Montana. The final EIS is now available for public review. The responsible officials of the Forest Service and Bureau of Land Management are proposing a decision, based on the analysis in the final EIS. The proposed decision is also available, and, before its approval, may be protested by those who have participated in the planning process and have an interest that is, or may be, adversely affected by the proposed decision. This protest opportunity is being offered by both the Forest Service and the Bureau of Land Management and is the only administrative review available in this process. The Forest Services' appeal process will not be applied to this decision.

DATES: Protests of the proposed decision must be filed with the Director of the Bureau of Land Management and the Chief of the Forest Service by January 16, 2001.

ADDRESSES: Copies of the final EIS and proposed decision may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The final EIS and proposed decision are also available via the internet (http://www.icbemp.gov).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, or Geoff Middaugh, Deputy Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770. For information specific to the protest process, contact Gary Wyke at the same address and telephone number.

SUPPLEMENTARY INFORMATION: On April 4, 2000, the responsible officials for the ICBEMP published a notice of availability in the **Federal Register** of the supplemental draft EIS for the ICBEMP. A 90-day public review and comment period was provided. Refinements in the EIS have been made in response to public comment and internal review. Responses to comments and changes to the supplemental draft EIS are included in the final EIS. The responsible officials have also proposed a decision, which is to approve and implement alternative S2 from the supplemental draft EIS, as refined in response to public comment.

This proposed decision has been distributed to the public, along with the final EIS. The proposed decision, when approved, will amend land use plans for the administrative units of the Forest Service and Bureau of Land Management within the ICBEMP area as follows:

Forest Service: Boise, Payette, Salmon-Challis, and Sawtooth National Forests and the portion of the Caribou National Forest addressed by the Science Assessment (PNW–GTR–405) in the Intermountain Region; Idaho Panhandle, Clearwater, Nez Perce, Kootenai, Lolo, Flathead, Helena, Deerlodge, and Bitterroot National Forests in the Northern Region; and Ochoco, Winema, Malheur, Deschutes, Fremont, Wallowa-Whitman, Umatilla, Okanogan, and Colville National Forests in the Pacific Northwest Region.

Bureau of Land Management: Lower Snake River District, Upper Snake River District, and the Upper Columbia-Salmon Clearwater District in Idaho; Missoula Field Office in Montana; and Prineville, Lakeview, Burns, Vale, and Spokane Districts in Oregon/Washington.

The Bureau of Land Management planning regulations (43 CFR Part 1610) and the Forest Service planning regulations (36 CFR 219) both provide the public with the opportunity to request administrative review of a proposed land use plan decision. The Bureau of Land Management regulations describe a protest process (43 CFR 1610.5–2):

Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

The Forest Service regulations provide that (36 CFR 219.32(e)):

Where the Forest Service is a participant in a multi-agency decision subject to objection under this part, the responsible official and reviewing officer may waive the objection procedures of this part to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

The Bureau of Land Management and the Forest Service are participating in a multi-agency decision. The responsible officials of the Forest Service and Bureau of Land Management have agreed to provide a joint response to those who file for administrative review of the proposed decision. The responsible officials of the Forest Service (the Regional Foresters of the Northern, Intermountain, and Pacific Northwest Regions) and the reviewing officer (the Chief of the Forest Service) waive the objection procedures under part 219.32 to adopt the administrative review procedure of the Bureau of Land Management. The reasons for this decision are as follows:

—The Forest Service and Bureau of Land Management jointly share the lead for the Interior Columbia Basin Ecosystem Management Project.

—The two agencies have gone jointly to the public for scoping, information-

gathering, and review since the inception of the Project.

—Using one administrative review procedure lets the public request review from both agencies at one time, rather than having to make two separate, potentially redundant requests.

—Using two separate administrative review procedures, including potential changes in the proposed Project decision, could result in the two agencies' recording two different decisions. This result would fail to meet the original purpose of this action, which was to develop and analyze a strategy for management of lands administered by both the Forest Service and the Bureau of Land Management.

To request administrative review of the proposed decision for the Interior Columbia Basin Ecosystem Management Project use the following procedure:

—Put the protest in writing and mail it to the Director of the Bureau of Land Management and the Chief of the Forest Service at the following address: Director, Bureau of Land Management and Chief, US Forest Service, ICBEMP Project, PO Box 65480, Washington, DC 20035.

—The protest shall be filed with the Director and Chief by January 16, 2001.

—The protest shall contain:

The name, mailing address, telephone number and interest of the person filing the protest;

A statement of the issue or issues being protested;

A statement of the part or parts of the amendment being protested;

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

A concise statement explaining why the responsible officials' decision is believed to be wrong.

The BLM Director and Forest Service Chief will promptly render a joint decision on the protest. The decision will be in writing and will set forth the reasons for the decision. The decision will be sent to the protesting party by certified mail, return receipt requested.

The joint decision of the Director and Chief shall be the final decision of the Department of the Interior and the Department of Agriculture.

The protest process described here is the only administrative review opportunity available in the ICBEMP decision-making process. The Forest Service appeal process, familiar to some participants, will not be used in this planning effort.

Reviewers who do not request administrative review of the proposed decision may not preserve their standing to litigate the final decision.

Dated: December 7, 2000.

Martha Hahn,

State Director, Bureau of Land Management.

Dated: December 7, 2000.

Jack Blackwell,

Forest Service.

[FR Doc. 00–32101 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF AGRICULTURE

[00–02–S]

Grain Inspection, Packers and Stockyards Administration; Designation for the Minnesota, Virginia, Frankfort (IN), and Indianapolis (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** of December 1, 2000, concerning Designation for the Minnesota, Virginia, Frankfort (IN), and Indianapolis (IN) Areas. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail janhart@gipsadc.usda.gov.

Correction

In the **Federal Register** of December 1, 2000, in FR Doc. 00–304898, on page 75239, correct the first date in the ''Designation end'' column of the chart to read 09/30/2003.

Dated: December 4, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–32157 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Field Office Technical Guide of NRCS in South Dakota; Availability of Proposed Changes

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practices: Irrigation Canal or Lateral (320); Irrigation Storage Reservoir; Irrigation System, Sprinkler (442); Irrigation System, Tailwater Recovery (447); Land Clearing (460); Land Smoothing (466); Open Channel (582); and Pond (378).

DATES: Comments on this notice must be received on or before January 17, 2001.

ADDRESSES: All comments concerning the proposed conservation practice standards changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fouth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: December 4, 2000.

Dean Fisher,

State Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–32174 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Field Office Technical Guide of NRCS in South Dakota; Availability of Proposed Changes

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practice Irrigation Pit or Regulating Reservoir, Irrigation Pit (552A).

DATES: Comments on this notice must be received on or before January 17, 2001.

ADDRESSES: All comments concerning the proposed conservation practice standard changes should be addressed to: Dean Fisher, State Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: December 6, 2000.

Shelli Moore,

Assistant State Conservationist for Operations, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 00–32175 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

[I.D. 121200B]

Submission for OMB Review; Comment request.

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Pollock Fishery Vessel Monitoring System.

Form Numbers(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,600.

Number of Respondents: 150.

Average Hours Per Response: 6 hours to install a vessel monitoring system, 4 hours for annual maintenance of the system, and 5 seconds per automated position transmission.

Needs and Uses: Participants in the Bering Sea–Aleutian Islands pollock fishery would be required to purchase a vessel monitoring system that automatically transmits location data every 20 minutes during a fishing trip. The vessel owner would be responsible for installation and data transmission charges. The position information is necessary for NMFS to enforce regulations regarding fishing in the Steller sea lion conservation area.

Affected Public: Business and other for–profit organizations.

Frequency: Position reports every 20 minutes, installation once.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Clayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–32051 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Special Shrimp Scientific and Statistical Committee (SSC) on January 3, 2001, and a meeting of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) on January 4, 2001.

DATES: The Standing and Special Shrimp SSC will meet beginning at 2:00 p.m. on January 3, 2001. The Standing and Special Reef Fish SSC will meet beginning at 9:00 a.m. on January 4, 2001.

ADDRESSES: The meetings will be held at the Chateau LeMoyne, 301 Dauphine Street, New Orleans, LA 70130; telephone: 504–581–1303.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Standing and Special Shrimp SSC will meet to review a revision to Draft Amendment 11 to the Shrimp Fishery Management Plan which clarifies that sanctions for fishing violations can be exercised against both a shrimp vessel registration and a shrimp vessel permit.

The Standing and Special Reef Fish SSC will meet to review a report of the Reef Fish Stock Assessment Panel and to recommend total allowable catches (TACs) for red grouper and greater amberjack. The SSC will also make recommendations on a proposed red snapper recovery plan that calls for converting from a constant catch to a constant fishing mortality rate strategy beginning in 2004, and thereafter a review and adjustment of TAC at five-year intervals. Dr. Bob Shipp, University of South Alabama, will make a presentation to the SSC on historical perspectives of the red snapper stock. In addition, the SSC will review an early draft of options being considered for including in a new Reef Fish plan amendment. These options deal with a longline limited entry system, moving the longline boundary line, phasing out the use of longlines, the use of cut–up reef fish for bait, an electronic vessel monitoring system for longline and fish trap vessels, the use of powerheads when spearfishing, requiring operator permits for commercial and charter/headboat operators, a commercial grouper fishery endorsement, grouper closed seasons, prohibiting the import of undersized red snapper, eliminating dormant reef fish permits, and changes to the species listed in the reef fish management unit and deep-water grouper aggregation. Additional options may be added or deleted as this options paper is developed into Reef Fish Amendment 18.

Although other non-emergency issues not on the agenda may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 27, 2000.

Dated: December 12, 2000.

Richard W. Surdi,

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

[FR Doc. 00–32168 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Advisory Panel (AP) on January 5, 2001.

DATES: The Reef Fish AP will meet beginning at 9:00 a.m. on January 5, 2001.

ADDRESSES: The meeting will be held at the Chateau LeMoyne, 301 Dauphine Street, New Orleans, LA 70130; telephone: 504–581–1303.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Reef Fish AP will meet to review a report of the Reef Fish Stock Assessment Panel and to recommend total allowable catches (TACs) for red grouper and greater amberjack. The AP will also make recommendations on a proposed red snapper recovery plan that calls for converting from a constant catch to a constant fishing mortality rate strategy beginning in 2004, and thereafter a review and adjustment of TAC at five-year intervals. In addition, the AP will review an early draft of options being considered for including in a new Reef Fish plan amendment. These options deal with a longline limited entry system, moving the longline boundary line, phasing out the use of longlines, the use of cut-up reef fish for bait, an electronic vessel monitoring system for longline and fish trap vessels, the use of powerheads when spearfishing, requiring operator permits for commercial and charter/headboat operators, a commercial grouper fishery endorsement, grouper closed seasons, prohibiting the import of undersized red snapper, eliminating dormant reef fish permits, and changes to the species listed in the reef fish management unit and deep–water grouper aggregation. Additional options may be added or deleted as this options paper is developed into Reef Fish Amendment 18.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson–Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December, 27, 2000.

Dated: December 12, 2000.

Richard W. Surdi,

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

[FR Doc. 00–32169 Filed 12–15–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120700D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad–Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will a hold work session, which is open to the public.

DATES: The SPOC will meet Wednesday, January 10, 2001, 10 a.m. to 5 p.m., and Thursday, January 11, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; telephone: (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck or Don McIsaac, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this work session is to review topic areas and issues contained in the Groundfish Strategic Plan; prioritize the various topic areas and issues; develop a draft implementation schedule; discuss the make–up of management-alternative development teams; and develop recommendations to the Council about the implementation process and schedule, and membership of the development teams.

This meeting is the first step in implementing the Groundfish Strategic Plan. In September 2000, the Council adopted the following guidelines for implementing the plan:

1. At the September 2000 Council meeting, the Council adopts the Final Groundfish Strategic Plan document (per revisions incorporated after the summer public comment phase).

2. The Council directs the formation of a ''Groundfish Strategic Plan Implementation Oversight Committee'' which should be composed of Council members, some of which will have been members of the Strategic Plan Development Committee, to ensure continuity and an effective transition to implementation.

3. At its discretion, the Implementation Oversight Committee may establish small implementation development teams to develop specific alternative(s) for implementing elements of the Strategic Plan. Implementation development teams will be comprised of Council subpanel, management team, and committee members from the Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, Enforcement Committee, and members of the public as deemed necessary by the Implementation Oversight Committee.

4. The Implementation Oversight Committee works at the direction of the Council and is tasked with making recommendations regarding implementation of the strategic plan.

5. The Implementation Oversight Committee goals should include: (a) effective transition to the implementation phase, (b) ensuring the plan is implemented in a timely fashion, and (c) whenever possible, doing so in a fashion that provides for constituent acceptance and buy-in.

6. At the direction of the Council, the Implementation Oversight Committee will develop recommended schedules for carrying out all components of the strategic plan.

7. The Implementation Oversight Committee will develop recommendations for all components of the strategic plan that can be developed further: (a) directly by the Council, (b) via advisory entity assignments, or (c) through formation and use of a implementation development team approach, e.g., capacity reduction implementation development team(s), which would handle all of the complexities of addressing the implementation of capacity reduction. For example, there might be four teams – with industry representatives from trawl, fixed gear, open access with groundfish target, and open access with non-groundfish target. Each of these teams will also have a representative from the Implementation Oversight Committee, with a charge to develop a plan and product by ''x'' date. The Implementation Oversight Committee considers the work of the implementation development teams and develops the final recommendations for the Council. Clarification, input, and technical support will be available to all teams with ''on-call'' availability from Council staff, states, NMFS staff and General Counsel, etc.

8. It will be important to consider current conditions in the groundfish fishery, including the effects of recent changes in resource status, fishery management, and the environment, as part of the strategic plan implementation process.

Although non-emergency issues not contained in the SPOC meeting agenda may come before the SPOC for discussion, those issues may not be the subject of formal SPOC action during the meeting. SPOC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the SPOC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: December 11, 2000.

Richard W. Surdi,

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

[FR Doc. 00–32052 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120700C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) and Highly Migratory Species Advisory Subpanel (HMSAS) will hold work sessions, which are open to the public.

DATES: The HMSPDT and HMSAS will meet jointly on Monday, January 8, 2001, 8 a.m. to 5 p.m.; Tuesday, January 9, 2001, 8 a.m. to 5 p.m.; and Wednesday, January 10, 2001, 8 a.m. to 5 p.m. The HMSPDT will convene for a work session on Thursday, January 11, 2001, 8 a.m. to 5 p.m. and Friday, January 12, 2001, 8 a.m. until business for the day is completed.

ADDRESSES: The work sessions will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92038–0271; telephone: (619) 546–7000.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work sessions is to review and revise sections of the draft fishery management plan (FMP) for highly migratory species (HMS); the draft FMP is scheduled for review by the Council in March 2001.

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson–Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of international activities related to HMS fisheries in the eastern Pacific Ocean.

Although non–emergency issues not contained in the HMSPDT/HMSAS meeting agenda may come before the HMSPDT and/or HMSAS for discussion, those issues may not be the subject of formal HMSPDT nor HMSAS action during these meetings. HMSPDT and/or HMSAS action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson–Stevens Act, provided the public has been notified of the HMSPDT's and/or HMSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 11, 2000.

Richard W. Surdi,

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

[FR Doc. 00–32053 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Management Process Committee (GMPC) will hold a work session, which is open to the public.

DATES: The GMPC will meet Thursday, January 11, 2001, 2 p.m. to 5 p.m. and Friday, January 12, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; telephone: (503) 650-5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck or Don McIsaac, Pacific Fishery Management Council; (503) 326-6352.

SUPPLEMENTARY INFORMATION: The formation of this Ad-Hoc committee is in response to a Council request (November 2000) for a formal review of the current groundfish management process. Thus, the primary purpose of this work session is to review the Council's annual groundfish management process. Specifically, the GMPC will discuss problems associated with the current process and options to address these problems. The GMPC will also begin development of recommendations for changes to the process. The recommendations of the GMPC will be reviewed at the March 2001 Council meeting.

Although non-emergency issues not contained in the GMPC meeting agenda may come before the GMPC for discussion, those issues may not be the subject of formal GMPC action during the meeting. GMPC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the GMPC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: December 12, 2000.

Richard W. Surdi,

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

[FR Doc. 00–32166 Filed 12–15–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Automation of Paper Comment Cards

AGENCY: Office of Administration and Management, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Administration and Management announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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.

DATES: Consideration will be given to all comments received by February 16, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of Administration and Management/Quality Management Office, ATTN: Ms. Joyce Mussey, 1777 N. Kent St. Suite 14038, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Office of Administration and Management/Quality Management Office (703) 588–8142.

Title and OMB Number: Interactive Customer Evaluation System, Customer Comment Cards: OMB Number 0704–[To be Determined].

Needs and Uses: The Interactive Customer Evaluation System automates and (eventually) eliminates the current manual paper comment cards, which exist at various customer service locations throughout the Department of Defense.

Affected Public: Individuals or households; business or other for-profit.

Annual Burden Hours: 144.

Number of Respondents: 2880.

Responses per Respondent: 1.

Average Burden Per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Members of the public who respond on these automated comment cards are authorized customers and have been provided a service through DoD customer service organizations. They have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. They also have the opportunity to provide any comments that might be beneficial in improving the process and in turn the service to the customer. This is a management tool for improving customer services.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32065 Filed 12–15–00 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity (TMA), DOD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), TMA, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways of 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.

DATES: Consideration will be given to all comments received February 16, 2000.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TMA, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, ATTN: LTC Thomas Williams.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call LTC Thomas Williams at (703) 681–3636.

Title; Associated Form; and OMB Number: Formulary Survey of

Prescribers in Military Treatment Facilities (MTFs) and TRICARE Contracts.

Needs and Uses: A confidential survey will be completed at two points in time, before and after the implementation of the new uniform formulary program by DoD, by prescribers working for MTFs and TRICARE Contractors. The two surveys will collect information which will be used to assess their experiences prescribing formulary and non-formulary medications. This information will inform future implementation and enforcement of the uniform formulary system within the Military Health System (MHS) as mandated by Congress.

Affected Public: Individuals—MTSs and TRICARE contract providers.

Annual Burden Hours: 330.

Number of Respondents: 1000 per survey; 2000 total.

Respondents per Respondent: 1 per person.

Average Burden Per Response: 20 minutes per survey.

Frequency: Two times; before and after the implementation of the uniformed formulary.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

National Defense Research Institute (NDRI), an OSD-sponsored federally funded research and development center at RAND, will undertake an evaluation of the DoD's Uniform Formulary Program for TMA, focusing on the issues identified in the legislation and which address the interests of Congress in MHS formulary management, and producing the two required reports in Congress. NDRI will collect the information and generate the analyses necessary to meet the requirements outlined in Section 701 of the National Defense Authorization Act for FY2000.

Activities include the collection and analysis of information obtained confidentially at two points in time from prescribers (physicians, physician, assistants, and nurse practitioners) within the MTF and TRICARE contract providers: prior to and following complete implementation of a uniform formulary. Information will be collected on the extent to which the prescribing activities and behaviors of current prescribers within TRICARE and the MTFs are affected by the implementation of a uniform formulary. Furthermore, the survey will ask prescribers their thoughts about the impact of a uniform formularly on the aggregate cost, quality and accessibility of health care provided to covered beneficiaries. Finally, this effort will also gather information on the prescribers' beliefs and attitudes regarding the rationale behind implementing an integrated formulary system within the Military Health System (MHS).

The evaluation reports will address all the legislative requirements, which include providing information about the opinions of prescribers about formulary development (*i.e.* it use and its usefulness) the impact of formulary restrictions on prescribers' clinical decision-making, and the prescribers' view of the impact of formulary restrictions on the cost, quality and accessibility of healthcare provided to MHS beneficiaries.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32066 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Academy Candidate Personal Data Record; USAF Form 146; OMB Number 0701–0064.

Type of Request: Extension.

Number of Respondents: 7,233.

Responses per Respondent: 1.

Annual Responses: 7,233.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,617.

Needs and Uses: The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32063 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Academy Request for Secondary School Transcript; USAF Form 148; OMB Number 0701–0066.

Type of Request: Reinstatement.

Number of Respondents: 6,954.

Responses per Respondent: 1.

Annual Responses: 6,954.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,477.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. The information is required by 10 U.S.C. 9346. Respondents are students who are applying for admission to the Air Force Academy. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32064 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services for Fiscal Year 2001

SUMMARY: Notice is hereby given that on September 30, 2000, the Deputy Chief Financial Officer approved the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 2001. These rates were effective October 1, 2000.

The FY 2001 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to size, the sections containing the Drug Reimbursement Rates (section IV.C) and the rates for Ancillary Services Requested by Outside Providers (section IV.D.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: *http://www.tricare.osd.mil/ebc/rm/rmhome.html.* The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) were effective October 1, 2000. Pharmacy rates are updated on an as needed basis.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$4,144.00	$5,694.00	$6,016.00
B. Surgical Care Services (Cosmetic Surgery)	1,895.00	2,604.00	2,752.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG).[3]			

1. Average FY 2001 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,986.00	$5,712.00	$6,002.00
Other Urban/Rural	3,468.00	6,633.00	7,004.00
Overseas	3,872.00	9,045.00	9,489.00

2. Overview

The FY 2001 inpatient rates are based on the cost per Diagnosis Related Group (DRG), which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. Each large urban or other urban/rural Military Treatment Facility (MTF) providing inpatient care has their own ASA rate. The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. Overseas MTFs use the rates specified in paragraph I.C.1. For providers performing inpatient care at a civilian facility for a DoD beneficiary, see note 3. For a more complete description of the development of MTF-specific ASAs and how they are applied refer to the ASA Primer at: http://www.tricare.osd.mil/org/pae/asa_primer/asa_primer1.html.

An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital (Reynolds Army Community Hospital) in Other Urban/Rural areas.

a. The cost to be recovered is the MTF cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.2244. (DRG statistics shown are from FY 1999.)

c. The MTF-applied ASA rate is $6,831 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.2244) in subparagraph 3.b., above, multiplied by the amount ($6,831) in subparagraph 3.c., above.

e. Cost to be recovered is $15,195.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020	Nervous System Infection Except Viral Meningitis.	2.2244	8.3	5.8	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF-applied ASA
Reynolds Army Community Hospital	Other Urban/Rural	.9156	1.0	$7,004	$6,831

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.2244	000	2.2244	$15,195
#2	21 days	0	2.2244	000	2.2244	15,195
#3	35 days	6	2.2244	.7594	2.9838	20,382

* DRG Weight.
** Outlier calculation=33 percent of per diem weight × number of outlier days.
=.33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold).
=.33 (2.2244/5.8) × (35–29).
=.33 (.38352) × 6 (take out to five decimal places).
=.12656 × 6 (carry to five decimal places).
=.7594 (carry to four decimal places).
*** MTF-Applied ASA × Total RWP.

II. Outpatient Rates—Per Visit [1 2]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Medicare Care			
BAA	Internal Medicine	$147.00	$204.00	$216.00
BAB	Allergy	80.00	111.00	117.00
BAC	Cardiology	129.00	180.00	190.00
BAE	Diabetic	105.00	146.00	154.00
BAF	Endocrinology (Metabolism)	151.00	210.00	222.00
BAG	Gastroenterology	183.00	255.00	269.00
BAH	Hematology	286.00	398.00	420.00
BAI	Hypertension	216.00	301.00	318.00
BAJ	Nephrology	221.00	307.00	324.00
BAK	Neurology	165.00	229.00	242.00
BAL	Outpatient Nutrition	69.00	96.00	101.00
BAM	Oncology	201.00	280.00	295.00
BAN	Pulmonary Disease	186.00	259.00	273.00
BAO	Rheumatology	139.00	194.00	205.00
BAP	Dermatology	115.00	160.00	169.00
BAQ	Infectious Disease	181.00	252.00	266.00
BAR	Physical Medicine	115.00	160.00	169.00
BAS	Radiation Therapy	169.00	235.00	248.00
BAT	Bone Marrow Transplant	190.00	264.00	279.00
BAU	Genetic	330.00	460.00	485.00
BAV	Hyperbariac	344.00	480.00	506.00
	B. Surgical Care			
BBA	General Surgery	$215.00	$299.00	$316.00
BBB	Cardiovascular and Thoracic Surgery	419.00	584.00	616.00
BBC	Neurosurgery	249.00	347.00	366.00
BBD	Ophthalmology	130.00	181.00	191.00
BBE	Organ Transplant	1,106.00	1,541.00	1,625.00
BBF	Otolaryngology	149.00	207.00	219.00
BBG	Plastic Surgery	168.00	235.00	247.00
BBH	Proctology	125.00	174.00	184.00
BBI	Urology	164.00	228.00	240.00
BBJ	Pediatric Surgery	89.00	125.00	131.00
BBK	Peripheral Vascular Surgery	98.00	137.00	145.00
BBL	Pain Management	138.00	193.00	203.00
BBM	Vascular and Interventional Radiology	493.00	687.00	724.00

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	C. Obstetrical and Gynecological (OB-GYN) Care			
BCA	Family Planning	$76.00	$106.00	$111.00
BCB	Gynecology	127.00	177.00	187.00
BCC	Obstetrics	104.00	144.00	152.00
BCD	Breast Cancer Clinic	240.00	334.00	352.00
	D. Pediatric Care			
BDA	Pediatric	$92.00	$128.00	$134.00
BDB	Adolescent	83.00	115.00	121.00
BDC	Well Baby	63.00	87.00	92.00
	E. Orthopaedic Care			
BEA	Orthopaedic	$143.00	$200.00	$211.00
BEB	Cast	89.00	123.00	130.00
BEC	Hand Surgery	76.00	106.00	112.00
BEE	Orthotic Laboratory	93.00	130.00	137.00
BEF	Podiatry	80.00	112.00	118.00
BEZ	Chiropractic	38.00	53.00	55.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	$165.00	$230.00	$242.00
BFB	Psychology	115.00	160.00	169.00
BFC	Child Guidance	92.00	128.00	135.00
BFD	Mental Health	148.00	206.00	217.00
BFE	Social Work	147.00	205.00	217.00
BFF	Substance Abuse	141.00	197.00	208.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	$107.00	$149.00	$157.00
BHA	Primary Care	109.00	151.00	160.00
BHB	Medical Examination	111.00	155.00	163.00
BHC	Optometry	72.00	100.00	105.00
BHD	Audiology	52.00	73.00	77.00
BHE	Speech Pathology	122.00	170.00	180.00
BHE	Community Health	85.00	118.00	125.00
BHG	Occupational Health	108.00	151.00	159.00
BHH	TRICARE Outpatient	74.00	104.00	109.00
BHI	Immediate Care	161.00	225.00	237.00
	H. Emergency Medical Care			
BIA	Emergency Medical	$173.00	$242.00	$255.00
	I. Flight Medical Care			
BJA	Flight Medicine	$124.00	$173.00	$182.00
	J. Underseas Medical Care			
BKA	Undersea Medicine	$77.00	$108.00	$114.00
	K. Rehabilitative Services			
BLA	Physical Therapy	$56.00	$79.00	$83.00
BLB	Occupational Therapy	75.00	104.00	110.00

III. Ambulatory Procedure Visit (APV)—Per Visit [51]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	$1,313.00	$1,829.00	$1,929.00
BE	Orthopaedic Care	1,664.00	2,319.00	2,446.00

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND 2. There is a rate established for that clinic in section II. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	378.00	527.00	556.00

IV. Other Rates and Charges[12]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Per Each			
FBI	Immunization	$22.00	$31.00	$32.00
	B. Family Member Rate (formerly Military Dependents Rate)			
		$11.45		
	C. Reimbursement Rates for Drugs Requested by Outside Providers[6] [15]			
	D. Ancillary Services Requested by an Outside Provider—Per Procedure[7] [5]			
DB	Laboratory procedures requested by an outside provider CPT '00 Weight Multiplier.	$15.00	$22.00	$23.00
DC, DI	Radiology procedures requested by an outside provider CPT '00 Weight Mutiplier.	79.00	115.00	120.00
	E. Dental Rate—Per Procedure[11]			
	Dental Service	$73.00	$112.00	$117.00
	ADA code weight multiplier			
	F. Ambulance Rate—Per Hour[12]			
FEA	Ambulance	$81.00	$113.00	$120.00
	G. AirEvac Rate—Per Trip (24 hour period)[13]			
	AirEvac Services—Ambulatory	$339.00	$473.00	$499.00
	AirEvac Services—Litter	989.00	1,379.00	1,454.00
	H. Observation Rate—Per Hour[14]			
	Observation Services—Hour	$20.00	$28.00	$30.00

V. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [8]	FY 2001 charge [9]	Amount of change
Mammaplasty—augmentation	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV	([a] [b])
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV	([a] [b])
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Lipectomy Suction per region [10] ..	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Scar Revisions beyond CHAMPUS.	86.84	1578	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a] [b] [c])

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [8]	FY 2001 charge [9]	Amount of change
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])
Chemical Peel	8624	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])
Arm/Thigh Dermolipectomy	86.83	15836/15832	Inpatient Surgical Care Per Diem or APV	([a b])
Refractive surgery			APV or applicable Outpatient Clinic Rate	([b c e])
Radial Keratotomy		65771.		
Other Procedure (if applies to laser or other refractive surgery).		66999.		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	([b c])
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure until (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to Office of the Assistant Secretary of Defense (Health Affairs) Policy on vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000, for further guidance on billing for these services. It can be downloaded from: http://www.tricare.osd.mil/policy/2000poli.htm.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas (see paragraph I.C.1.). The Uniform Business Office must receive documentation of care provided in order to produce a bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS Code

B: Outpatient Care (Functional Category)
BA: Medical Care (Summary Account)
BAA: Internal Medicine (Subaccount)

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (for freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used *only* by those clinics that are *not* a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU cannot be defined and an APV cannot be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from MTFs that are prescribed by providers external to the MTF (e.g., physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard

cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by National Drug Code (NDC) number. The prescription charge is calculated by multiplying the number of units (e.g. tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies, and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available form the TRICARE Management Activity's Uniform business Office website: http://www.tricare.osd.mil/ebc/rm/rm__home.html.

[7] The list of FY 2001 rates for ancillary services requested by outside providers and obtained at a MTF is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm__home.html.

Charges for ancillary services requested by an outside provider (e.g., physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD-established weight for the Physicians' Current Procedural Terminology (CPT 00) code by either the laboratory or radiology multiplier (section IV.D.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 00 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in section V. The patient shall be charged the rate as specified in the FY 2001 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III., or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implants) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $17.55 ($117 × .15=$17.55).

The list of FY 2001 ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm__home.htm1.

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section IV.F. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24-hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to nearest hour. For example, if a patient has received 1 hour and 20 minutes of observation, then you bill for 1 hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services and not billed separately but are added to the APV rate to recover all expenses.

[15] Final rule 32 CFR Part 220, published February 16, 2000, eliminated the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' is replaced with the phrase ''ancillary services requested by an outside provider.'' The elimination of the threshold also eliminated the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR part 220.

Attachment 1

Adjusted Standardized Amounts (ASA) by Military Treatment Facility

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,637	$6,286	$3,286	$6,637
0004	502nd Med Grp—Maxwell AFB	F	6,984	6,614	3,458	6,984
0005	Bassett ACH—Ft. Wainwright	A	7,152	6,774	3,541	7,152
0006	3rd Med Grp—Elmendorf AFB	F	7,041	6,668	3,486	7,041
0009	56th Med Grp—Luke AFB	F	5,986	5,697	2,978	5,986
0014	60th Med Grp—Travis AFB	F	9,912	9,387	4,907	9,912
0018	30th Med Grp—Vandenberg AFB	F	7,035	6,663	3,483	7,035
0019	95th Med Grp—Edwards AFB	F	7,004	6,633	3,468	7,004
0024	NH Camp Pendleton	N	7,614	7,245	3,787	7,614
0028	NH Lemoore	N	6,997	6,627	3,465	6,997
0029	NH San Diego	N	9,744	9,273	4,847	9,744
0030	NH Twenty Nine Palms	N	6,111	5,815	3,039	6,111
0032	Evans ACH—Ft. Carson	A	6,946	6,578	3,439	6,946
0033	10th Med Grp—USAF Academy	F	6,994	6,623	3,463	6,994
0037	Walter Reed AMC—Washington DC	A	9,010	8,574	4,482	9,010
0038	NH Pensacola	N	8,939	8,465	4,426	8,939
0039	NH Jacksonville	N	7,537	7,173	3,749	7,537

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0042	96th Med Grp—Eglin AFB	F	8,309	7,869	4,114	8,309
0043	325th Med Grp—Tyndall AFB	F	7,002	6,631	3,467	7,002
0045	6th Med Grp—MacDill AFB	F	5,991	5,702	2,980	5,991
0047	Eisenhower AMC—Ft. Gordon	A	8,550	8,098	4,233	8,550
0048	Martin ACH—Ft. Benning	A	7,987	7,564	3,954	7,987
0049	Winn ACH—Ft. Stewart	A	6,644	6,292	3,289	6,644
0052	Tripler AMC—Ft. Shafter	A	9,533	9,029	4,720	9,533
0053	366th Med Grp—Mountain Home AFB	F	6,982	6,612	3,457	6,982
0055	375th Med Grp—Scott AFB	F	7,625	7,256	3,793	7,625
0056	NH Great Lakes	N	6,063	5,770	3,016	6,063
0057	Irwin AH—Ft. Riley	A	6,521	6,176	3,229	6,521
0060	Blanchfield ACH—Ft. Campbell	A	6,605	6,255	3,270	6,605
0061	Ireland ACH—Ft. Knox	A	6,829	6,467	3,381	6,829
0064	Bayne-Jones ACH—Ft. Polk	A	6,573	6,225	3,254	6,573
0066	89th Med Grp—Andrews AFB	F	8,062	7,672	4,010	8,062
0067	NNMC Bethesda	N	9,786	9,313	4,868	9,786
0073	81st Med Grp—Keesler AFB	F	8,772	8,308	4,343	8,772
0075	Wood ACH—Ft. Leonard Wood	A	6,539	6,193	3,237	6,539
0078	55th Med Grp—Offutt AFB	F	8,697	8,236	4,306	8,697
0079	99th Med Grp—Nellis AFB	F	6,002	5,712	2,986	6,002
0083	377th Med Grp—Kirtland AFB	F	6,971	6,602	3,452	6,971
0084	49th Med Grp—Holloman AFB	F	7,004	6,633	3,468	7,004
0086	Keller ACH—West Point	A	7,296	6,909	3,612	7,296
0089	Womach AMC—Ft. Bragg	A	7,817	7,403	3,870	7,817
0091	NH Camp LeJeune	N	6,744	6,387	3,339	6,744
0092	NH Cherry Point	N	6,788	6,429	3,361	6,788
0093	319th Med Grp—Grand Forks AFB	F	7,032	6,660	3,482	7,032
0094	5th Med Grp—Minot AFB	F	6,857	6,494	3,395	6,857
0095	74th Med Grp—Wright-Patterson AFB	F	10,371	9,822	5,135	10,371
0096	72nd Med Grp—Tinker AFB	F	6,001	5,711	2,985	6,001
0097	97th Med Grp—Atlus AFB	F	6,976	6,607	3,454	6,976
0098	Reynolds ACH—Ft. Sill	A	6,831	6,469	3,382	6,831
0100	NH Newport	N	6,002	5,712	2,986	6,002
0101	20th Med Grp—Shaw AFB	F	6,964	6,595	3,448	6,964
0103	NH Charleston	N	6,879	6,514	3,406	6,879
0104	NH Beaufort	N	6,871	6,507	3,402	6,871
0105	Moncrief ACH—Ft. Jackson	A	6,961	6,592	3,446	6,961
0106	28th Med Grp—Ellsworth AFB	F	6,939	6,572	3,436	6,939
0108	Wm Beaumonth AMC—Ft. Bliss	A	8,329	7,888	4,124	8,329
0109	Brooke AMC—Ft. Sam Houston	A	8,511	8,099	4,233	8,511
0110	Darnall AH—Ft. Hood	A	8,606	8,151	4,261	8,606
0112	7th Med Grp—Dyess AFB	F	6,892	6,528	3,413	6,892
0113	82nd Med Grp—Sheppard AFB	F	6,903	6,537	3,418	6,903
0117	59th Med Wing—Lackland AFB	F	8,640	8,222	4,297	8,640
0119	75th Med Grp—Hill AFB	F	5,983	5,693	2,976	5,983
0120	1st Med Grp—Langley AFB	F	5,954	5,666	2,962	5,954
0121	McDonald ACH—Ft. Eustis	A	5,649	5,376	2,810	5,649
0123	Dewitt AH—Ft. Belvoir	A	8,237	7,839	4,097	8,237
0124	NH Portsmouth	N	7,469	7,107	3,715	7,469
0125	Madigan AMC—Ft. Lewis	A	11,018	10,435	5,455	11,018
0126	NH Bremerton	N	8,165	7,733	4,043	8,165
0127	NH Oak Harbor	N	6,283	5,979	3,125	6,283
0129	90th Med Grp—F.E. Warren AFB	F	6,989	6,619	3,460	6,989
0131	Weed ACH—Ft. Irwin	A	7,003	6,633	3,467	7,003
0449	24th Med Grp—Howard	F	9,489	9,045	3,872	9,489
0606	95th CSH—Heidelberg	A	9,489	9,045	3,872	9,489
0607	Landstuhl Rgn MC	A	9,489	9,045	3,872	9,489
0609	67th CSH—Wurzburg	A	9,489	9,045	3,872	9,489
0612	121st Gen Hosp—Seoul	A	9,489	9,045	3,872	9,489
0615	NH Guantanamo Bay	N	9,489	9,045	3,872	9,489
0616	NH Roosevelt Roads	N	9,489	9,045	3,872	9,489
0617	NH Naples	N	9,489	9,045	3,872	9,489
0618	NH Rota	N	9,489	9,045	3,872	9,489
0620	NH Guam	N	9,489	9,045	3,872	9,489
0621	NH Okinawa	N	9,489	9,045	3,872	9,489
0622	NH Yokosuka	N	9,489	9,045	3,872	9,489
0623	NH Keflavik	N	9,489	9,045	3,872	9,489
0624	BH Sigonella	N	9,489	9,045	3,872	9,489
0633	48th Med Grp—RAF Lakenhealth	F	9,489	9,045	3,872	9,489
0635	39th Med Grp—Incirlik AB	F	9,489	9,045	3,872	9,489
0638	51st Med Grp—Osan AB	F	9,489	9,045	3,872	9,489

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Interagency rate	IMET rate	TPC rate
0639	35th Med Grp—Misawa	F	9,489	9,045	3,872	9,489
0640	374th Med Grp—Yokota AB	F	9,489	9,045	3,872	9,489
0805	52nd Med Grp—Spangdahlem	F	9,489	9,045	3,872	9,489
0808	32st Med Grp—Aviano	F	9,489	9,045	3,872	9,489

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32068 Filed 12–15–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: December 11, 2000 (8 a.m. to 8 p.m.).

ADDRESSES: The Defense Intelligence Agency, 2000 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Victoria J. Prescott, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32067 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 7–8, 2001; May 16–17, 2001; and October 24–25, 2001, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 11, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–32062 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Delete a system of records.

SUMMARY: The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 17, 2001, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B.L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report.

Dated: December 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00020

SYSTEM NAME:

Pet Registration (February 22, 1993, 58 FR 10630).

REASON:

These records are now being maintained under a Department of the Army Privacy Act system of records notice identified as A0040–905 DASG, Defense Privately Owned Animal Record Files.

[FR Doc. 00–32059 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1630 on Tuesday, 06 February 2001, and 0730–1630 on Wednesday, 07 February 2001, and 0730–1300 on Thursday, 08 February 2001. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session. The meeting location will be at the Tripler Army Medical Center, Hawaii.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31979 Filed 12–15–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense (DoD) Brokers

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Program Director for the Department of Defense (DoD), Proposes to allow relocation companies operating as brokers to participate as transportation providers in the movement of personal property under the current program for both domestic and international traffic. Therefore, the carrier qualification program is being amended to add qualification standards for brokers and to expand the Tender of Service to include brokers. The effect is that brokers will be eligible to compete in DoD's Personal Property Program. Under these procedures, brokers interested in competing for DoD traffic can apply for qualification by complying with all requirements as set forth in the current personal property program. Requirements can be assessed via the worldwide web at www.mtmc.army.mil, click Transportation Services, then click on Personal Property & POV. Follow the ''How to Do Business in the Personal Property Program,'' instructions located under Carriers Approvals & Performance.

DATES: Comments must be submitted on or before February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, Headquarters, Military Traffic Management Command, ATTN: MTPP–HQ, Room 10N67–51, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–5000; Telephone (703) 428–2982; Telefax (703) 428–3388.

SUPPLEMENTARY INFORMATION:

Background

HQMTMC is allowing relocation companies operating as brokers to participate in the current personal property program. A broker is defined as a person or company who, for compensation, provides transportation services for DoD shippers, with reasonable diligence, according to the terms and conditions of transportation contracts, rate tenders and Government bills of lading (GBL's) negotiated between MTMC and the broker. The broker understands that its initial approval and retention of approval are contingent upon its meeting or exceeding all the requirements set forth in the current personal property program, both domestic and/or international, which ever is applicable. Brokers may participate in one or both programs. Brokers must also establish and maintain to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and service. Sufficient resources include equipment, personnel, facilities and finances to handle traffic anticipated by DoD/MTMC under the broker's proposed scope of operations in accordance with the service requirements of the shipper. The broker understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. Applications may be submitted to Sylvia Walker at the address shown above.

Regulatory Flexibility Act

This proposed change of procurement policy is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act 44 U.S.C. 3501 *et seq.* does not apply because no information collection requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the general public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31980 Filed 12–15–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend and Delete Systems of Records.

SUMMARY: The Department of the Army is proposing to delete four systems of records notices and amend one in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 17, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the

Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

A0600–8 NGB

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG) (October 18, 1999, 64 FR 56195).

REASON:

Records have been incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

A0600–8b TAPC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS) (February 22, 1993, 58 FR 10002).

REASON:

Records have been incorporated into A0600–8–23 DAPE, Standard Installation/Division Personnel System.

A0608–4 DAMO

SYSTEM NAME:

Trophy Firearm Registration (February 22, 1993, 58 FR 10002).

REASON:

These records are no longer maintained, and have been destroyed.

A0640 ARPC

SYSTEM NAME:

Personnel Management/Action Officer Files (December 23, 1997, 62 FR 67055).

REASON:

ARPC no longer maintains these records. Records formerly in this system of records can now be found in A0640–10a, Military Personnel Records Jacket (MPRJ) and A0640–10b TAPC, Official Military Personnel.

AMENDMENT:

A0195–2A USACIDC

SYSTEM NAME:

Source Register (July 7, 1997, 62 FR 36266).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'CID Form 20 voucher'.

* * * * *

STORAGE:

Delete entry and replace with ''Paper files and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual's name, source control number, and Social Security Number.''

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence.

* * * * *

A0195–2a USACIDC

SYSTEM NAME:

Source Register.

SYSTEM LOCATION:

PRIMARY LOCATION:

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

Segments of the system exist at subordinate elements of the U.S. Army Criminal Investigation Command which exercise local administrative and technical control of sources. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals, civilian or military, who are used as sources by the U.S. Army Criminal Investigation Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain cross indexed code numbers, name, race, military occupational specialty, sex, date and place of birth, home of record, educational level, area of utilization, civilian employment, handler, letters, vouchers, personal history, performance, citizenship, marital status, physical description, criminal history, expertise, talents, actions taken, other related personal data and CID Form 20 voucher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–2, Criminal Investigation Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor performance and reliability; to check utilization of sources; to maintain an accounting of expenditures connected with the sources; to answer Congressional inquiries concerning misuse or mistreatment of sources or those who allege they are not sources; to document fear-of-life transfers for military sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to foreign countries under the provisions of Status of Forces Agreements or Treaties.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

By individual's name, source control number and Social Security Number.

SAFEGUARDS:

All information is stored in locked containers within secured buildings; information is accessible only by designated officials having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

At Headquarters, U.S. Army Criminal Investigation Command, information concerning other sources is retained for 10 years after termination of source's service. At locations of U.S. Army Criminal Investigation Command, source files and cross-index cards are retained for 3 years after termination of source's service; master source cards are retained until no longer needed to control or facilitate work. Destruction is by shredding. Retention period for automated records varies according to Headquarters, U.S. Army Criminal Investigation Command and field element, but total retention may not exceed 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010

6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

For verification purposes, individual should provide the full name, Social Security Number, date of birth, current address, timeframe of being a source, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to information about themselves contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

For verification purposes, individual should provide the full name, Social Security Number, date of birth, current address, timeframe of being a source, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the military personnel records if the source is military, or the civilian personnel records if source is a civilian employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–32060 Filed 12–15–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 12, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Evaluation of Independent Programs.

Frequency: One time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 1,003, Burden Hours: 639.

Abstract: The Rehabilitation Services Administration (RSA), in the Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, has funded a comprehensive two-year evaluation of Parts B and C of the Centers for Independent Living (CIL) program.

CIL programs promote a philosophy of independent living-consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy-the goal is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and enhance the integration and full inclusion of individuals with disabilities into the mainstream of American society.

This evaluation will include questionnaire surveys of all CIL directors and a nationally representative sample of current and former consumers of CIL services. The study will examine two major areas: (1) Consumer satisfaction and outcomes of services, and (2) systems advocacy and change.

The results of the study will be used to complement Section 704 Annual Performance Report data; support RSA Government Performance and Results Act (GPRA) reporting requirements; assist CILs to identify successful service and advocacy strategies; and inform advocates and policy makers about the Independent Living Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–32093 Filed 12–15–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–01GO90001

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Million Solar Roofs Program for State and Local Partnerships. The selected applicants will receive financial assistance under a grant with DOE.

DATES: The solicitation will be issued in mid December, 2000.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.golden.doe.gov/businessopportunities.html, click on ''solicitations'' and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE's Million Solar Roofs (MSR) Initiative is an initiative to install solar energy systems on one million U.S. buildings by 2010. It was announced by President Clinton on June 26, 1997 in his speech before the United Nations Session on Environment and Development. This effort includes two types of solar energy technology—photovoltaics that produce electricity from sunlight and solar thermal panels that produce heat for domestic hot water, space heating or heating swimming pools. A key strategy of the Initiative is to catalyze market demand in local areas through the establishment of State and Local MSR Partnerships. The overall goal of this solicitation is to assist State and Local Partnerships in contributing to the installation of one million solar energy systems on U.S. rooftops by the year 2010.

The MSR Partnerships bring together business, government and community organizations, (*e.g.,* solar energy educational organizations, or not-for-profit housing agencies) at the regional level with a commitment to install a pre-determined number of solar energy systems. DOE provides access to a variety of financing options, training and technical assistance from DOE=s existing infrastructure, recognition and support, and a link to solar energy businesses, associations and related industries that can provide assistance. New MSR Partnerships can declare their intent to join the Initiative by including such a letter with their application for this solicitation. A complete description of partnerships and their representative activities can be found on the MSR website at *http://www.eren.doe.gov/millionroofs/* DOE's Office of Energy Efficiency and Renewable Energy will only consider proposals from interested State and Local Partnerships to help fund their MSR program development and implementation activities. Grant awards will be administered by the DOE Regional Offices. DOE intends to allocate a portion of total available funding to each of the six DOE regions based on the number of MSR Partnerships and the potential for new partnerships to be established in each Region. Applicants will only be competing against other partnerships in their DOE region. The project or activity must be conducted in a designated MSR partnership community. Any member of a State or Local Partnership, except industry associations, can apply on behalf of the Partnership, including builders, energy service providers, utilities, non-governmental organizations, local governments, or state governments. The different organizations/offices involved in a State or Local Partnership are encouraged to collaborate on their response to this solicitation. There is no cost-sharing requirement for these grants although cost-sharing will be favorably considered in the selection process. Subject to the availability of funds, 20–50 awards totaling $1,500,000 (DOE funding) in FY 2001 are anticipated to be awarded as a result of this Solicitation. DOE funding for individual awards will be up to $50,000 in size. Solicitation number DE–PS36–01GO90001 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned for mid December, with applications due 45 days after the solicitation has been issued.

FOR FURTHER INFORMATION CONTACT: James McDermott, Contract Specialist, at 303–275–4732, e-mail jim_mcdermott@nrel.gov. Responses to questions will be made by amendment to the solicitation and will be posted on the DOE Golden Field Office Home Page.

Issued in Golden, Colorado, on December 7, 2000.

Jerry Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 00–32119 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

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 meetings be announced in the **Federal Register**.

DATES: Thursday, January 4, 2001, 6 p.m. to 9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, 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. Quarterly update by Colorado Department of Public Health and Environment.
2. Educational session on earned value system being used with the new Kaiser-Hill contract at Rocky Flats.
3. Presentation on Radionuclide Soil Action Level report regarding new science.
4. Review and approve EMSSAB Stewardship Workshop draft recommendations.
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 9:00 a.m. to 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on December 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–32117 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Wednesday, January 11, 2001, 10:30 am to 5:30 pm and Thursday, January 12, 2001, 8:30 am to 12:30 pm.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22206.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 202.586.0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Wednesday, January 11, 2001

Welcome remarks
Status of Nuclear Energy's FY 2001 Budget
Overview of the Advanced Accelerator Applications Program
Report of Task Force on Technical Opportunities for Increasing Proliferation Resistence of Global Civilian Nuclear Power Systems (TOPS)
Report of other NERAC Subcommittees and Panels

Thursday, January 12, 2001

Report of Subcommittee on Generation IV Technology Planning
Discussion of the future of university research reactors
Public comment period

Public Participation: The day and a half meeting is open to the public. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:a.m. and 4:p.m., Monday through Friday, except holidays.

Issued in Washington, DC on December 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–32118 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications

AGENCY: Department of Energy (DOE).

ACTION: Notice of supplemental announcement (01) to the Fiscal Year 2001 broad based solicitation for submission of financial assistance applications involving research, development, and demonstration.

SUMMARY: The Hydrogen Program of the DOE Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to the EERE Fiscal Year 2001 Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–01GO90000, dated November 27, 2000. Under this Supplemental Announcement, DOE is seeking proposals that can advance and demonstrate the use of fuel cell technology in hydrogen-powered, mobile, underground mining vehicles. DOE is proposing to undertake this effort under the provisions of the Hydrogen Future Act of 1996. DOE anticipates selecting one Application for negotiation of an award under this Supplemental Announcement. The award will be a Cooperative Agreement with a term to be determined based upon the proposed demonstration time frame of the selected Applicant. A minimum cost share of 50% of the total project costs is required for an Application to be considered for award under this Supplemental Announcement.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement in Mid—December, 2000. The closing date of the Supplemental Announcement is February 15, 2001.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html* under ''Solicitations''.

FOR FURTHER INFORMATION CONTACT: Shirley Johnson, Contract Specialist, at Facsimile 303–275–4788 or e-mail *Shirley_Johnson@nrel.gov.*

Issued in Golden, Colorado, on December 8, 2000.

Jerry L. Zimmer,

Procurement Director, Golden Field Office.

[FR Doc. 00–32120 Filed 12–15–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–588–001, FERC–588]

Information Collection Submitted for Review and Request for Comments

December 12, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and

should address a copy of those comments to the commission, as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 5, 2000 (65 FR 53709) and made this notation in its submission to OMB.

DATES: Comments regarding this collection are best assured of having their full effect if received on or before January 17, 2001.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Commission Desk Officer, 725 17th Street NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–588, ''Emergency Natural Gas Transportation, Sale and Exchange Transactions.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0144. The Commission is requesting reinstatement, with change, of the previously approved data collection for which approval expired July 31, 2000, and a three-year approval of the collection of data. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of Collection of information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of Section 7(c) of the Natural Gas Act (Pub. L. 75–688) and provisions of the Natural Gas Policy Act of 1978 (NGPA).

Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements ''temporary acts or operations for which the issuance of a certificate will not be required in the public interest.'' The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale or exchange, or a request to extend the sixty-day term of the emergency transportation if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

5. *Respondent Description:* The respondent universe currently comprises approximately 15 natural gas pipeline companies.

6. *Estimated Burden:* 150 total burden hours, 15 respondents, 15 responses annually, 10 hours per response.

Statutory Authority: Section 7(c) of the NGA (15 U.S.C. 717–717w) and provisions of NGPA (15 U.S.C. 3301–3432).

David P. Boergers,

Secretary.

[FR Doc. 00–32084 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–331–000 and RP01–23–000]

Algonquin Gas Transmission Company; Notice of Technical Conference

December 12, 2000.

On June 15, 2000, Algonquin Gas Transmission Company (Algonquin) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of Algonquin's filing. Subsequently, on October 2, 2000, Algonquin submitted a filing in Docket No. RP01–23–000 to comply with Order Nos. 587–G and 587–L. The Commission accepted the 587–L filing subject to further consideration in Algonquin's Order No. 637 compliance proceeding.

Take notice that a technical conference to discuss the various issues raised by Algonquin's filings will be held on Wednesday, January 10, 2001, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Algonquin's filings should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32073 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–23–002]

Algonquin Transmission Corporation; Notice of Compliance Filing

December 12, 2000.

Take notice that on November 27, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub First Revised Sheet No. 671
Sub First Revised Sheet No. 672

Algonquin states that the filing is being made in compliance with the Commission's October 27 Order, ''Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)].

Algonquin also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of

paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32076 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–332–000]

Allegheny Energy Supply Hunlock Creek, LLC; Notice of Issuance of Order

December 12, 2000.

Allegheny Energy Supply Hunlock Creek, LLC (Allegheny) submitted for filing a rate schedule under which Allegheny will engage in wholesale electric power and energy transactions at market-based rates. Allegheny also requested waiver of various Commission regulations. In particular, Allegheny requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Allegheny.

On December 11, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Allegheny should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Allegheny is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Allegheny's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 11, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32130 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–015]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 12, 2000.

Take notice that on December 4, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following Agreement to a recently filed negotiated rate transaction:

ITS–2 Service Agreement No. 70069 between Columbia Gulf Transmission Company and Matrix Oil & Gas, Inc. dated November 17, 2000.

Columbia Gulf states that transportation service which was scheduled to commence upon Commission approval.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32086 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–177–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

December 12, 2000.

Take notice that on December 6, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 112, with an effective date of February 1, 2001.

Cove Point states that the purpose of the instant filing is to propose a new tariff provision which will permit Cove Point, under certain limited circumstances, to reserve capacity for future expansion projects. Cove Point states that its proposed tariff revisions are consistent with current Commission policy that pipelines may reserve certain capacity for future expansion projects in a not unduly discriminatory manner.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in

lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32080 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3641–000 and ER00–3641–001]

The Dayton Power and Light Company; Notice of Issuance of Order

December 12, 2000.

The Dayton Power & Light Company (DP&L) submitted for filing a rate schedule under which DP&L will engage in wholesale electric power and energy transactions at market-based rates. DP&L also requested waiver of various Commission regulations. In particular, DP&L requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by DP&L.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DP&L should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, DP&L is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DP&L's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene protests, as set forth above, is January 8, 2001.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32123 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3619–000, ER00–3619–001; ER00–3620–000, ER00–3620–001; ER00–3621–000, ER00–3621–001; ER00–3746–000, ER00–3746–001, and ER00–3746–002]

Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing III, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Connecticut, Inc. and Dominion Nuclear Marketing III, L.L.C. (collectively hereafter ''Applicants'') submitted for filing rate schedules under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates. The Applicants also requested waiver of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32122 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–000]

Dominion Transmission, Inc.; Notice of Technical Conference

December 12, 2000.

In the Commission's order issued on October 31, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, January 11, 2001, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32075 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 93 FERC 61,119 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–174–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2001:

First Revised Sheet No. 256
First Revised Sheet No. 2200
First Revised Sheet No. 2203
First Revised Sheet No. 2204
First Revised Sheet No. 2205
First Revised Sheet No. 2206
First Revised Sheet No. 2207
First Revised Sheet No. 2208
First Revised Sheet No. 2209
Original Sheet No. 2210
Original Sheet No. 2211
Original Sheet No. 2212

DTI states that it is proposing changes to its Rate Schedule IT and its E–SCRIPT System Contact Information and the E–SCRIPT System User Request Form. The proposed changes to Rate Schedule IT are not substantive but would simply renumber tariff sections. DTI states that its changes to the tariff for E–SCRIPT related matters revise DTI's E–SCRIPT tariff form and make various administrative and ministerial language changes required to update the tariff for recent technological changes.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32078 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–22–004]

Dominion Transmission, Inc.; Notice of Report of Refunds

December 12, 2000.

Take notice that on November 30, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing its report of refunds attributable to the resolution of the captioned proceedings. DTI states that the reported refunds and billing adjustments reflect DTI's implementation of the rates contained in the Commission Order dated June 16, 2000.

DTI states that the purpose of this filing is to report refunds and billing adjustments, with associated interest, that DTI made on November 1, 2000, and November 6, 2000. DTI further states that these refunds and billing adjustments were made as a result of DTI's implementation of the Commission's orders dated June 16, 2000 and October 2, 2000, in Docket Nos. TM00–1–22–000, *et al.* 91 FERC ¶ 61,281 (2000) and 93 FERC ¶ 61,010 (2000).

DTI states that copies of its report and summary workpapers are being mailed to affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32082 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–015]

Dominion Transmission, Inc.; Notice or Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with an effective date of September 23, 2000.

Substitute Original Sheet No. 1401

DTI states that the purpose of this filing is to incorporate an approved tariff sheet from DTI's Second Revised Volume No. 1 into DTI's currently effective Third Revised Volume No. 1.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32085 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–241–000]

Duke Energy Washoe, LLC; Notice of Issuance of Order

December 12, 2000.

Duke Energy Washoe, LLC (Duke Washoe) submitted for filing a rate schedule under which Duke Washoe will engage in wholesale electric power and energy transactions at market-based rates. Duke Washoe also requested waiver of various Commission regulations. In particular, Duke Washoe requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Washoe.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Washoe should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Washoe is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Washoe's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32128 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–140–000]

Dynegy Danskammer, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dynegy Danskammer, L.L.C. (Dynegy Danskammer) submitted for filing a rate schedule under which Dynegy Danskammer will engage in wholesale electric power and energy transactions at market-based rates. Dynegy Danskammer also requested waiver of various Commission regulations. In particular, Dynegy Danskammer requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dynegy Danskammer.

On December 5, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dynegy Danskammer should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Dynegy Danskammer is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dynegy Danskammer's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32126 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–141–000]

Dynegy Roseton, L.L.C.; Notice of Issuance of Order

December 12, 2000.

Dynegy Roseton, L.L.C. (Dynegy Roseton) submitted for filing a rate schedule under which Dynegy Roseton will engage in wholesale electric power and energy transactions at market-based rates. Dynegy Roseton also requested waiver of various Commission regulations. In particular, Dynegy Roseton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Dynegy Roseton.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Dynegy Roseton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Dynegy Roseton is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Dynegy Roseton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32127 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–324–000]

Fulton Cogeneration Associates, L.P.; Notice of Issuance of Order

December 12, 2000.

Fulton Cogeneration Associates, L.P. (Fulton) submitted for filing a rate schedule under which Fulton will engage in wholesale electric power and energy transactions at market-based rates. Fulton also requested waiver of various Commission regulations. In particular, Fulton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Fulton.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Fulton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Fulton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Fulton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32129 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3604–000 and ER00–3604–001]

Georgia-Pacific Corporation; Notice of Issuance of Order

December 12, 2000.

Georgia-Pacific Corporation (Georgia-Pacific) submitted for filing a rate schedule under which Georgia-Pacific will engage in wholesale electric power and energy transactions at market-based rates. Georgia-Pacific also requested waiver of various Commission regulations. In particular, Georgia-Pacific requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Georgia-Pacific.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Georgia-Pacific should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Georgia-Pacific is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Georgia-Pacific's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32121 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3717–000 and ER00–3717–001]

Mirabito Gas & Electric, Inc.; Notice of Issuance of Order

December 12, 2000.

Mirabito Gas & Electric, Inc. (Mirabito) submitted for filing a rate

schedule under which Mirabito will engage in wholesale electric power and energy transactions at market-based rates. Mirabito also requested waiver of various Commission regulations. In particular, Mirabito requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mirabito.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mirabito should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Mirabito is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mirabito's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32124 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–178–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 6, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on January 6, 2001:

Fifth Revised Sheet No. 135D
Tenth Revised Sheet No. 144

Northern states that the purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services to provide increased service flexibility and enhance market liquidity through the addition of eight (8) points available for receipt and delivery of storage services.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32081 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–173–000]

Questar Pipeline Company; Notice of Tariff Filing

December 12, 2000.

Take notice that on December 5, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective December 22, 2000.

Sixth Revised Sheet No. 51
Fifth Revised Sheet No. 52
Second Revised Sheet No. 52A
Third Revised Sheet No. 55
Fourth Revised Sheet No.56
First Revised Sheet No. 56A
Fourth Revised Sheet No. 73
Second Revised Sheet No. 73A

Questar stated that the purpose of this filing is to, at customers request, simplify the process used in bidding for unsold capacity on Questar's pipeline system.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 00–32077 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–137–000]

Tenaska Alabama II Partners, L.P.; Notice of Issuance of Order

December 12, 2000.

Tenaska Alabama II Partners, L.P. (Tenaska Alabama) submitted for filing a rate schedule under which Tenaska Alabama will engage in wholesale electric power and energy transactions at market-based rates. Tenaska Alabama also requested waiver of various Commission regulations. In particular. Tenaska Alabama requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Tenaska Alabama.

On December 8, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tenaska Alabama should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Tenaska Alabama is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tenaska Alabama's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32125 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–000 and RP01–25–000]

Texas Eastern Transmission Corporation; Notice of Technical Conference

December 12, 2000.

On August 15, 2000, Texas Eastern Transmission Corporation (Texas Eastern) (Texas Eastern) filed to comply with Order No. 637. A number of parties have protested various aspect of Texas Eastern's filing. Subsequently, on October 2, 2000, Texas Eastern submitted a filing in Docket No. RP01–25–000 to comply with Order No. 587–L. The Commission accepted the 587–L filing subject to further consideration in Texas Eastern's Order No. 637 compliance proceeding.

Take notice that the technical conference to discuss the various issues raised by Texas Eastern's filing will be held on Tuesday, January 9, 2001, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Texas Eastern's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32074 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–006]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 12, 2000.

Take notice that on December 4, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, a corrected electronic version of a notice that should have accompanied its November 13, 2000 filing in First Revised Volume No. 1, Substitute First Revised Sheet No. 126 and Second Substitute First Revised Sheet No. 278.

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued on October 30, 2000, 1 in Docket No. RP00–83–004 and RP00–83–005, implementing a new summer no-notice (SNS) service on the Texas Gas system. Texas Gas also states that the November 13, 2000 filing was noticed as having been filed on November 21, 2000, whereas the actual filing date was November 13, 2000.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and those parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32087 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–175–000]

Total Peaking Services, L.L.C.; Notice of Tariff Change

December 12, 2000.

Take notice that on December 5, 2000, Total Peaking Services, L.L.C. (Total Peaking), tendered for filing as part of

its FERC Gas Tariff, Original Volume No. 1, the following tariffs, with an effective date of:

Revised Tariff Sheets Nos. 64 and 82

Total Peaking states that the Revised Sheets remove language from Total Peaking's Tariff that currently subjects customers to imbalance penalties.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32079 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–434–000]

Wisconsin Public Service Corporation; Notice of Issuance of Order

December 12, 2000.

Wisconsin Public Service Corporation (WPSC) submitted for filing a rate schedule under which WPSC will engage in wholesale electric power and energy transactions at market-based rates. WPSC also requested waiver of various Commission regulations. In particular, WPSC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WPSC.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WPSC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WPSC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WPSC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32131 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP01–22–000 and No. CP01–23–000; CSLC EIR No. 703, BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Intent/Preparation To Prepare a Joint Environmental Impact Statement/Report for the Proposed North Baja Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 12, 2000.

The staffs of the Federal Energy Regulatory commission (FERC or Commission) and the California State Lands Commission (CSLC) will jointly prepare an environmental impact statement/report (EIS/EIR) that will discuss the environmental impacts of North Baja Pipeline, LLC's (NBP) proposed North Baja Pipeline Project in La Paz County, Arizona, and Riverside and Imperial Counties, California.[1] The North Baja Pipeline Project would involve the construction and operation of about 79.8 miles of 36- and 30-inch-diameter pipeline and a new 18,810-horsepower (hp) compressor station. The FERC will use this EIS/EIR in its decision-making process to determine whether the project is in the public convenience and necessity. The CSLC will use the document to consider NBP's application for leasing the State's Sovereign and School Lands for the pipeline.

The FERC will be the lead Federal agency in the preparation of this EIS/EIR while the CSLC will be the State Lead Agency for California. The joint document, which will avoid much duplication of environmental analyses, will satisfy the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

If you are a landowner receiving this notice, you may be contacted by a NBP representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could

[1] NBP's applications in Docket Nos. CP01–22–000 and CP01–23–000 were filed with the FERC under sections 7(c) and 3 of the Natural Gas Act, respectively.

initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' should have been attached to the project notice NBP provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website *www.ferc.fed.us*).

This notice is being sent to affected landowners along NBP's proposed and alternative routes; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries, newspapers, and television stations; commentors on the FERC Notice of Application; and the commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this notice we [2] are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS/EIR. These agencies may choose to participate once they have evaluated NBP's proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice.

Because of the federally-managed land that the proposal would affect, NBP has filed a right-of-way application with the El Centro Field Office of the Bureau of Land Management (BLM). As part of considering NBP's application, the BLM has agreed to meet its NEPA responsibilities by participating as a cooperating agency in the preparation of this EIS/EIR. Also, the BLM will consider a plan amendment which may be necessary for pipeline construction outside of the designated utility corridors as described in the California Desert Conservation Area Plan, 1980 (as amended).

Summary of the Proposed Project

NBP's proposed action consists of the construction and operation of:

- About 79.8 miles of 36-inch-diameter (11.5 miles) and 30-inch-diameter (68.3 miles) natural gas pipeline (North Baja Pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California, to an interconnection at the international border between the United States and Mexico;
- A new compressor station (Ehrenburg Compressor Station) consisting of three 6,270-hp, gas-fired centrifugal compressor units (with one additional 6,270-hp spare unit) at the El Paso interconnect in La Paz County, Arizona;
- Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station); and
- A pig launcher facility at the Ehrenberg Compressor Station site; a pig receiver facility at the Ogilby Meter Station site; and a separate pig launcher/receiver facility (Rannells Trap) in Riverside County, California.

The general location of the major project facilities is shown in appendix 1.[3]

In addition, NPB requests in Docket No. CP01–23–000 a Presidential Permit to site, construct, operate, and maintain pipeline facilities at the international border between the U.S. and Mexico.

The proposed facilities would be used to transport 500 million cubic feet per day of natural gas from the proposed interconnect with the existing El Paso pipeline to the U.S./Mexico border where it would interconnect with a new pipeline, Gasoducto Bajanorte, to be constructed by Sempra Energy Mexico (Sempra). The natural gas would then be transported westward on the Gasoducto Bajanorte pipeline to an interconnection with the existing Transportadora de Gas Natural de Baja California (TGN) pipeline in Baja California, Mexico. The TGN pipeline extends from Rosarita, Mexico to an interconnection with San Diego Gas and Electric Company pipeline facilities at the San Diego/Tijuana border. The natural gas transported on these pipelines would supply existing and planned power plants in Mexico that would serve electric power demand in northern Baja California, Mexico, and western U.S. markets.

The North Baja Pipeline Project is scheduled to be in service in September 2002. Construction is scheduled to take place between April and September 2002, although construction may occur outside this time period. The approximate duration of construction is 6 months for the compressor station and 4 months for the pipeline.

Land Requirements for Construction

Construction of NBP's proposed facilities would affect a total of about 942.2 acres of land. Following construction, about 457.3 acres would be retained as permanent right-of-way. The remaining 484.9 acres of temporary work space would be restored and allowed to revert to former use.

The nominal construction right-of-way for pipeline would be 80 feet wide, with 50 feet retained as permanent right-of-way. However, where the pipeline is proposed for construction within 18th Avenue on the southern outskirts of Blythe, California (about 7.6 miles), the nominal construction right-of-way would be about 60 feet, with 5 feet retained as permanent right-of-way. About 63 percent of the pipeline route would abut or overlap existing road or powerline rights-of-way. Additionally, a total of about 70 percent of the land affected by construction and operation of the North Baja Pipeline Project would be on public lands managed by the BLM (59 percent), the CSLC (1 percent), or California counties (10 percent).

The Ehrenberg Compressor Station, Ehrenberg Meter Station, and a pig launcher would be constructed on 12.4 acres of land within an approximate 80-acre site has been acquired by NBP. The Rannells Trap pig launcher/receiver facility would be constructed on a 0.7-acre site that would be leased/acquired from a private landowner. The Ogilby Meter Station and a pig receiver would be constructed on a 0.9-acre site that would be leased from the BLM. Mainline valves would be installed within each of these aboveground facilities and another four mainline valves would be spaced as required within the permanent pipeline right-of-way along the pipeline route.

The EIS/EIR Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The CSLC, as State Lead Agency for California, is required to consider the same potential impacts within the State of California under

[2] ''We,'' ''us,'' and ''our'' refer to the staffs of the FERC's Office of Energy Projects and the CSLC.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the page 10 of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

CEQA. The EIS/EIR we are preparing will give both the FERC and the CSLC the information we need to do that.

NEPA and CEQA also require us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS/EIR on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to be analyzed and presented in the EIS/EIR. All comments received are considered during the preparation of the EIS/EIR.

Our independent analysis of the issues will result in the publication of a Draft EIS/EIR. The Draft EIS/EIR will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes; affected landowners; local libraries, newspapers, and television stations; other interested parties; and the Commission's official service list for this proceeding. We will consider all comments on the Draft EIS/EIR and revise the document, as necessary, before issuing a Final EIS/EIR. The Final EIS/EIR will include our response to all comments received.

Currently Identified Environmental Issues

The EIS/EIR will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NBP. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:
  - — Assessment of potential geologic hazards.
  - — Effect on prime farmland soils.
  - — Desert construction, erosion control, and restoration.
- Water Resources and Wetlands:
  - — Directional drill of the Colorado River and All American Canal.
  - — Dry crossings of irrigation canals and drains in the Palo Verde Irrigation District.
  - — Open-cut crossings of 579 dry washes.
  - — Effect on 2.5 acres of wetlands.
- Vegetation and Wildlife:
  - — Effect on 573.2 acres of Sonoran creosote bush scrub.
  - — Effect on 96.9 acres of desert wash woodland.
- Endangered and Threatened Species:
  - — Potential effect on 9 federally listed species (including the desert tortoise).
  - — Potential effect on 31 state-listed species.
- Cultural Resources:
  - — Effect on historic and prehistoric sites.
  - — Native American and tribal concerns.
- Land Use, Recreation, and Visual Resources:
  - — Temporary effect on 13.8 acres of agricultural land.
  - — Permanent conversion of 13.1 acres of land from agricultural to industrial use.
  - — Temporary disturbance to residents who use 18th Avenue as access to their homes and businesses.
  - — Effect on about 56 miles of public land.
  - — Amendment to the California Desert Conservation Area Plan.
  - — Visual impacts.
- Socioeconomics:
  - — Potential effects on transportation and traffic.
  - — Effects of construction workforce demands on public services and temporary housing.
- Air Quality and Noise:
  - — Effects on local air quality and noise environment from construction and operation of the Ehrenberg Compressor Station.
- Reliability and Safety:
  - — Assessment of hazards associated with natural gas pipelines.
- Alternatives:
  - — Assessment or alternative routes and existing systems to reduce or avoid environmental impacts.
  - — Route alternatives in the Blythe and Cibola areas.
  - — Deviations from California Desert Conservation Area Desert Plan designated Utility Corridor J.
- Cumulative Impact:
  - — Assessment of the effect of the proposed project when combined with other projects that have been or may be proposed in the same region and similar time frame.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS/EIR and considered by the Commission and the CSLC. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP01–22–000;
- Label one copy of your comments for the attention of the Gas Group 1, PJ–11.1;
- Send an additional copy of your letter to the following individual: Goodyear K. Walker, California State Lands Commission, 100 Howe Ave., Suite 100 South, Sacramento, CA 95825.
- Mail your comments so that they will be received in Washington, DC on or before February 5, 2001.

Comments may also 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 website at http://www.ferc.fed.us/efi/doorbell.htm under the link to the User's Guide. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.''

Everyone who responds to this notice or comments throughout the EIS/EIR process will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS/EIR, please return the Information Request (appendix 3). You must send comments or return the Information Request for your name to remain on the mailing list.

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings that the FERC, CSLC, and BLM will conduct in the project area. The locations and times for these meetings are listed below.

Wednesday, January 10, 2001, 7:00 p.m.: Vacation Inn, 2000 Cottonwood Circle, El Centro, California 92243, (760) 352–9523

Thursday, January 11, 2001, 7:00 p.m.: Blythe City Council Chamber, 235 North Broadway, Blythe, California 92225, (760) 922– 6161

The public scoping meetings are designed to provide you with more detailed information and another opportunity to offer your comments on

the proposed project NBP representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS/EIR. A transcript of each meeting will be made so that your comments will be accurately recorded.

On January 10 and 11, 2001, we will also be conducting a site visit to the project area. This will be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS/EIR scoping process, you may want to become an official party to the proceeding, known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (*www.ferc.fed.us*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the involvement of the CSLC in the EIS/EIR process may be obtained from Kirk Walker, EIR Project Manager, at (916) 574–1893, or on the California State Lands website at *http://www/slc.ca.gov.*

David P. Boergers,

Secretary.

[FR Doc. 00–32083 Filed 12–15–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6918–3]

Clean Water Act Section 303(d): Availability of Proposed Determinations That Total Maximum Daily Loads (TMDLs) Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment EPA proposed determinations that TMDLs are not needed for 54 waterbody/pollutant combinations in the Mermenatu and Vermilion/Teche river basins. EPA prepared the proposed determinations in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007. EPA is also required to add or delete waters to the schedule as new data confirms that waters are or are not meeting water quality standards.

DATES: Comments on the 54 proposed determinations that TMDLs are not needed must be submitted in writing to EPA on or before January 17, 2001.

ADDRESSES: Comments on the proposed determinations should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for the proposed determinations is available for public inspection at this address as well. The administrative record file may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
050101	Bayou Des Cannes—Headwaters to Mermentau	Turbidity	Assessment of new data and information shows it is meeting Water Quality Standards (WQS).
050102	Bayou Joe Marcel	Turbidity	Assessment of new data and information show it is meeting WQS.
050103	Bayou Mallet	Turbidity	Assessment of new data and information show it is meeting WQS.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes.	Chlorides Sulfates	Assessment of new data and information show it is meeting WQS.

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY—Continued

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
050301	Bayou Nezpique—Headwaters to Mermentau River	Turbidity	Assessment of new data and information show it is meeting WQS.
050401	Mermentau River—Origin To Lake Arthur	Turbidity	Assessment of new data and information show it is meeting WQS.
050402	Lake Arthur and Lower Mermentau	Turbidity	Assessment of new data and information shows it is meeting WQS.
050501	Bayou Que de Tortue—Headwaters to Mermentau River.	Chlorides Sulfates Phosphorus	Assessment of new data and information shows it is it meeting WQS.
050602	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
050701	Grand Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
050702	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
050703	White Lake	Sulfates	Assessment of new data and information shows it is meeting WQS.
050901	Bays and Gulf Waters to State 3-mile Limit	Turbidity	Assessment of new data and information shows it is meeting WQS.
060202	Bayou Cocodrie	Turbidity	Assessment of new data and information shows it is meeting WQS.
060203	Chicot Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Chlorides Turbidity	Assessment of new data and information shows it is meeting WQS.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060207	Bayou des Glaises Diversion Channel	Turbidity	Assessment of new data and information shows it is meeting WQS.
060208	Bayou Boeuf—Headwaters to Bayou Courtableau	Chlorides Sulfates Turbidity	Assessment of new data and information shows it is meeting WQS.
060209	Irish Ditch/Big Bayou—Unnamed Ditch to Irish Ditch	Salinity/TDS Chlorides Sulfates	Assessment of new data and information shows it is meeting WQS.
060210	Bayou Carron	Turbidity	Assessment of new data and information shows it is meeting WQS.
060211	West Atchafalaya Borrow Pit Canal	Chlorides Turbidity	Assessment of new data and information shows it is meeting WQS.
060212	Chatlin Lake Canal and Bayou DuLac	Turbidity	Assessment of new data and information shows it is meeting WQS.
060401	Bayou Teche—Keystone Locks and Dam to Charenton Canal.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060501	Bayou Teche—Charenton Canal to Wax Lake Outlet	Turbidity	Assessment of new data and information shows it is meeting WQS.
060601	Charenton Canal	Turbidity	Assessment of new data and information shows it is meeting WQS.
060701	Tete Bayou	Turbidity	Assessment of new data and information shows it is meeting WQS.
060702	Lake Fausse Point and Dauterive Lake	Turbidity	Assessment of new data and information shows it is meeting WQS.
060703	Bayou du Portage	Turbidity	Assessment of new data and information shows it is meeting WQS.
060801	Vermilion River—Head-waters at Bayou Fusilier—Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge at Hwy 3073).	Chlorides Salinity/TDS Turbidity	Assessment of new data and information shows it is meeting WQS.
060802	Vermilion River—From New Flanders (Ambassador Caffery Bridge at Hwy 3073) To Intracoastal Waterway.	Salinity/TDS Chlorides Temp. Turbidity	Assessment of new data and information shows it is meeting WQS.
060803	Vermilion River Cutoff	Turbidity	Assessment of new data and information shows it is meeting WQS.
060804	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
060901	Bayou Petite Anse	Turbidity	Assessment of new data and information shows it is meeting WQS.
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur to Bayou Petite Anse (Estuarine).	Turbidity	Assessment of new data and information shows it is meeting WQS.
060903	Bayou Tigre	Turbidity	Assessment of new data and information shows it is meeting WQS.

EPA SEEKS COMMENTS ON 54 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NECESSARY—Continued

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
060904	Vermilion River B890 Basin New Iberia Southern Drainage Canal.	Turbidity	Assessment of new data and information shows it is meeting WQS.
060906	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.
060909	Lake Peigneur	Turbidity	Assessment of new data and information shows it is meeting WQS.
061102	Intracoastal Waterway	Turbidity	Assessment of new data and information shows it is meeting WQS.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the 54 proposed determinations that TMDLs are not necessary. EPA will review all data and information submitted during the public comment period and revise the determinations where appropriate.

Dated: November 27, 2000.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 00–32148 Filed 12–15–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1350–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1350–DR), dated December 6, 2000, and related determinations.

EFFECTIVE DATE: December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 6, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the damage in certain areas of beginning on October 31, 2000, and continuing through November 20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. 106–390, 114 Stat. 1552 (2000) (Stafford Act), I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven R. Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Carter, Fallon, Richland, Roosevelt, Sheridan, and Wibaux Counties for Public Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–32048 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3157–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3157–EM), dated December 4, 2000, and related determinations.

EFFECTIVE DATE: December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 4, 2000, the President declared an emergency under the authority of The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the near record snow on November 19–21, 2000, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1552 (2000), (''Stafford Act''). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Cattaraugus, Chautauqua and Erie for reimbursement for emergency protective measures 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); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–32047 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1349–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1349–DR), dated November 27, 2000, and related determinations.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma 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 November 27, 2000:

Jackson County for Public Assistance.

Oklahoma 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); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–32049 Filed 12–15–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–7]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled ''Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on December 31, 2000.

DATES: Interested persons may submit comments on or before January 17, 2001.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Senior Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2932, by electronic mail at *raudenbushe@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

In July 2000, the Finance Board promulgated a final rule that, among other things, authorizes the Federal Home Loan Banks (Banks), on a permanent program basis, to acquire residential mortgage loans from or through their members and housing associates and to hold these mortgages as investments. *See* 65 FR 43969 (July 17, 2000). The regulations governing the acquisition of these mortgages, known as ''acquired member assets,'' or ''AMA,'' are now codified in part 955 of the Finance Board's regulations. 12 CFR part 955. Under this AMA regulation, Banks engaging in AMA transactions are required to collect and maintain, and report to the Finance Board on a quarterly basis, certain loan-level data on each residential mortgage held. *See* 12 CFR 955.4. While this data is provided directly to the Finance Board by the Banks (which are government-sponsored enterprises), each Bank must initially collect the information from the private-sector member or housing associate institution from which the Bank acquires the mortgage.

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is charged with the duty to ''ensure that the * * * Banks carry out their housing finance mission.'' 12 U.S.C. 1422a(a). The Bank Act also authorizes the Finance Board to promulgate and enforce such regulations and orders as are necessary * * * to carry out the provisions'' of the Bank Act. *Id.* 1422b(a)(1). The Finance Board believes that the loan-level data reporting is essential in order to monitor the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs.

The Finance Board uses the information collection to create a database and reporting infrastructure for monitoring the Banks' achievement of the public purpose of their residential mortgage purchase programs on a par with that currently imposed on entities entering into secondary mortgage market transactions with the other housing government-sponsored enterprises (*i.e.*, Fannie Mae and Freddie Mac).

The OMB number for the information collection is 3069–0058. The OMB clearance for the information collection expires on December 31, 2000.

The likely respondents and/or recordkeepers include the Banks, institutions that are members or housing associates of a Bank and the Finance Board.

B. Burden Estimate

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—412.

b. Total annual responses—1600.

Percentage of these responses collected electronically—75%.

c. Total annual hours requested—38,632.

d. Current OMB inventory—264,400.

e. Difference—(225,768).

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—$300,000.00.

b. Total annual costs (O&M)—0.

c. Total annualized cost requested—$1,196,768.72.

d. Current OMB inventory $2,524,697.92.

e. Difference—($1,327,929.20).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding the information collection as part of the final AMA rulemaking, which appeared in the **Federal Register** on July 17, 2000. *See* 65 FR 43969 (July 17, 2000). The 60-day comment period closed on September 15, 2000. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: December 1, 2000.

James L. Bothwell,

Managing Director.

[FR Doc. 00–32110 Filed 12–15–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, December 20, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Capital Requirements for Federal Home Loan Banks

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 00–32217 Filed 12–13–00; 5:09 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Summit Bank Corporation, Atlanta, Georgia; to acquire at least 35 percent and up to 100 percent of the voting shares of Global Commerce Bank, Doraville, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Indiana United Bancorp, Greensburg, Indiana; to acquire 100 percent of the voting shares of Regional Bank, New Albany, Indiana (also known as Regional FSB),which will convert to a state chartered commercial bank.

2. Worth Bancorp, Spartanburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worth Bank (in organization), Spartanburg, Indiana.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Remada Financial Holdings, Inc., Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Claremont Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire voting shares of Alliance Bank of Blooming Prairie, Blooming Prairie, Minnesota.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Dickinson Holdings, Inc., Dickinson, Texas, and Dickinson Holdings of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens State Bank of Dickinson, Dickinson, Texas, and League City Bank & Trust, League City, Texas.

Board of Governors of the Federal Reserve System, December 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–32098 Filed 12–15–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee in Vital and Health Statistics (NCVHS), National Health Information Infrastructure Workgroup, Health Statistics for the 21st Century Workgroup.

Time and Date: January 11, 2001, 9 a.m.–5 p.m.

Place: Lowe's Hotel at L'Enfant Plaza, 480 L'Enfant Plaza, Washington, DC 20201, (202) 484–1000.

Status: Open.

Purpose: Two Workgroups of the NCVHS, the National Health Information Infrastructure Workgroup and the Health Statistics for the 21st Century Workgroup, are conducting a joint public hearing to solicit opinions from the public, including oral and written testimony, about the issues raised in two interim reports: ''Toward a National Health Information Infrastructure'' and ''Shaping a Vision for 21st Century Health Statistics.'' The interim reports may be downloaded from the NCVHS homepage at: *http://www.ncvhs.hhs.gov/* and all participants are encouraged to review them before the meeting.

The hearing will explore challenges to the development and implementation of a National Health Information Infrastructure (NHII). As envisioned in the interim report, the NHII is the set of technologies, standards, applications, systems, values, and laws that support all facets of individual health, health care, and public health. The broad goal of the NHII is to deliver information to individuals—consumers, patients, and professionals—when and where they need it, so they can use this information to make informed decisions about health and health care. Speakers invited by the NHII workgroup will discuss barriers to accomplishing the objectives described in the report, including financial and technical barriers to the NHII, along with recommendations for actions which could be taken to overcome constraints. Speakers will also address consumer interests and concerns and the role of principal stakeholder groups in achieving the NHII vision. The Workgroup will also hear additional testimony from the public on these areas.

The hearing will also seek comments about major trends and issues in population health and their implications for future information needs described in the report, ''Shaping a Vision for 21st Century Health Statistics.'' The report outlines themes that have emerged from national consultations involving health statistics users, public health providers, advocacy groups and health care providers at local, state, and Federal levels. The Workgroup's national consultative process has helped to identify trends and gaps in shaping the vision, as well as cross-cutting issues involved and several principles have emerged as essential qualities for developing the health statistics vision. Speakers invited by the 21st Century Workgroup will be asked to discuss specific local and state health statistics needs, specific means for generating private and public cooperation in defining health statistics needs and generating health statistics collaborations. Invited speakers will also be asked to provide specific comments and suggestions on the interim report, particularly as it relates to local and state health statistics needs and private and public cooperation.

Joint panels of speakers will address confidentiality and privacy issues pertinent to both Workgroups and will consider other topics of mutual relevance. The January hearing is the fourth and final of a series of joint public hearings conducted in several regions of the country to solicit testimony on the reports. Information from the hearings will be incorporated in the final reports expected to be completed in early 2001.

Person who would like to make a brief oral comment (3–5 minutes) during the January hearing will be placed on the agenda as time permits. To be included on the agenda, please submit testimony by January 3, 2001, to Debbie M. Jackson at (301) 458–4614, by e-mail at djackson@cdc.gov, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782. Persons wishing to submit written testimony only (no more than 2–3 typewritten pages) should also adhere to the due date of January 3, 2001. Testimony will also be accepted on-site as time permits. Please consult Ms. Jackson for further information about these arrangements. Additional information about the meeting will be provided by the NCVHS homepage at: http://www.ncvhs.hhs.gov/ shortly before the meeting date.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/.

Dated: December 11, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–32132 Filed 12–15–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #01001

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 meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, PA #01001, meeting.

Times and Dates: 7:30 p.m.–8 p.m., January 28, 2001 (Open); 8 p.m.–10 p.m., January 28, 2001 (Closed); 8 a.m.–6 p.m., January 29, 2001 (Closed); 8 a.m.–5 p.m., January 30, 2001 (Closed).

Place: Embassy Suites River Center, 10 E. River Center Boulevard, Covington, Kentucky 41011.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 01001.

CONTACT PERSON FOR MORE INFORMATION: Bernadine Kuchinski, Occupational Health Consultant, Office of Extramural Coordination and Special Projects,

National Institute for Occupational Safety and Health, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone 404/639–3342, e-mail bbk1@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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 11, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–32102 Filed 12–15–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1631]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on ''Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies'' (VICH GL23); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance document for industry (No. 116) entitled ''Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies'' (VICH GL23). This draft guidance document has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from a guidance regarding pharmaceuticals for human use, which was adopted by the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH). This draft VICH guidance document recommends a basic battery of tests that can be used to evaluate the genotoxicity of veterinary drug residues in human food in the European Union, Japan, and the United States.

DATES: Submit written comments on the draft guidance document by January 17, 2001, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance document entitled ''Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies'' (VICH GL23) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon Thompson, Center for Veterinary Medicine, (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e–mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6524, e-mail: candres1@cvm.fda.gov.

Regarding the draft guidance document: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: lmulliga@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/ New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Genotoxicity Studies

The VICH Steering Committee held a meeting on June 14 through 16, 2000, and agreed that the draft guidance document entitled ''Safety Studies for Veterinary Drug Residues in Human Food: Genotoxicity Studies'' (VICH GL23) should be made available for public comment. This draft guidance document has been adapted for veterinary use by the VICH from guidances regarding pharmaceuticals for human use which were adopted by the ICH and published in the **Federal Register** of April 24, 1996 (61 FR 18197), and November 21, 1997 (62 FR 62471). This draft guidance document is one of a series of VICH guidances developed to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory

authorities. The guidance on the overall strategy for the evaluation of veterinary drug residues in human food (VICH Guidance on General Testing Approach) will be made available at a later time. This guidance was developed after consideration of the existing ICH guidances for pharmaceuticals for human use: ''Genotoxicity: A Standard Battery of Genotoxicity Testing of Pharmaceuticals'' and ''Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals.'' Account was also taken of the Organisation for Economic Cooperation and Development methodological guidances and of the current practices for evaluating the safety of veterinary drug residues in human food in the European Union, Japan, the U.S.A., Australia, and New Zealand.

Comments about the draft guidance documents will be considered by the FDA and the VICH Safety Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidances and publish them as future guidance. (Information collection is covered under OMB No. 0910–0117. Information collection also could be covered by OMB No. 0910–0032.)

III. Significance of Guidance

This draft guidance document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (65 FR 56468, September 19, 2000). For example, the documents have been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommendation'' or ''recommended'' as appropriate to the context.

The draft guidance document represents the agency's current thinking on genotoxicity safety studies for veterinary drug residues in human food. This guidance document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments by January 17, 2001, to ensure adequate consideration in preparation of the final guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32113 Filed 12–15–00; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2001. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 2001 were set by the PDUFA, as amended, subject to adjustment for inflation. Total application fee revenues fluctuate with the number of fee-paying applications FDA receives. Fees for establishments and products are calculated so that total revenues from each category will approximate FDA's estimate of the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Frank P. Claunts, Office of Management and Systems (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Public Law 102–571), as amended by the FDAMA (Public Law 105–115), referred to as the PDUFA II in this document, establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 1998 through 2002, under the PDUFA II, the application fee rates are set in the statute, but are to be adjusted annually for cumulative inflation since FY 1997. Total application fee revenues are structured to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases.

Each year from FY 1998 through 2002, FDA is required to set establishment fees and product fees so that the estimated total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2001 for application, establishment, and product fees. These fees are retroactive to October 1, 2000, and will remain in effect through September 30, 2001. For fees already paid on applications and supplements submitted on or after October 1, 2000, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedule. For applications and supplements submitted after December 31, 2000, the new fee schedule must be used. Invoices for establishment and product fees for FY 2001 will be issued in December 2000, using the new fee schedule.

II. Inflation and Workload Adjustment Process

The PDUFA II provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of: (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC, metropolitan area. The PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)(1)).

The PDUFA II also structures the total application fee revenue to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as this portion of FDA's workload rises or falls. To implement this provision, each year FDA will estimate the number of fee-paying applications it anticipates receiving. The number of applications estimated will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA estimate of total application fee revenues to be received.

The PDUFA II also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories is projected to equal the revenues FDA expects to collect from application fees that year. The PDUFA II provides that the new fee rates based on these calculations be adjusted within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation Adjustment and Estimate of Total Application Fee Revenue

The PDUFA II provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation since 1997. It also provides for total application fee revenues to increase or decrease based on increases or decreases in the number of fee-paying applications submitted.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the PDUFA II for FY 2001 ($267,606 for applications requiring clinical data, and $133,803 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for cumulative inflation since 1997. That adjustment each year is to be the greater of: (1) The total percentage change that occurred during the preceding FY in the CPI, or (2) the total percentage pay change for that FY for Federal employees stationed in DC, as adjusted for any locality-based payment. The PDUFA II provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The adjustment for FY 1998 was 2.45 percent (62 FR 64849, December 9, 1997). This was the greater of the CPI increase for FY 1997 (2.15 percent) or the increase in applicable Federal salaries (2.45 percent).

The adjustment for FY 1999 was 3.68 percent. (63 FR 70777 at 70778, December 22, 1998). This was the greater of the CPI increase for FY 1998 (1.49 percent) or the increase in applicable Federal salaries (3.68 percent).

The adjustment for FY 2000 was 4.94 percent (64 FR 72669 at 72670, December 28, 1999). This was the greater of the CPI increase for FY 1999 (2.62 percent) or the increase in applicable Federal salaries (4.94 percent).

The adjustment for FY 2001 is 3.81 percent. This is the greater of the CPI increase for FY 2000 (3.45 percent) or the increase in applicable Federal salaries (3.81 percent).

Compounding these amounts (1.0245 times 1.0368 times 1.0494 times 1.0381) yields a total compounded inflation increase of 15.71 percent for FY 2001. The adjusted application fee rates are computed by adding one to the decimal equivalent of this percent (0.1571) and multiplying this amount (1.1571) by the FY 2001 statutory application fee rates stated above ($267,606 for applications requiring clinical data, and $133,803 for applications not requiring clinical data or supplements requiring clinical data). For FY 2001 the adjusted application fee rates are $309,647 for applications requiring clinical data, and $154,823 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 2001.

B. Estimate of Total Application Fee Revenue

Total application fee revenues for FY 2001 will be estimated by multiplying the number of fee-paying applications FDA receives in FY 2001 (from October 1, 2000, through September 30, 2001) by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are projected to be equal to total revenues FDA collects from application fees, FDA must first estimate its total FY 2001 application fee revenues. To do this FDA first determines its FY 2000 fee-paying full application equivalents, and uses that number in a linear regression analysis to predict the number of fee-paying full application equivalents expected in FY 2001. This is the same technique applied in each of the previous 2 fiscal years.

In FY 2000, FDA received and filed 117 human drug applications that require clinical data for approval, 21 that did not require clinical data for approval, and 131 supplements to human drug applications that required clinical data for approval. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications that may be subject to full application fees.

In addition, as of September 30, 2000, FDA refused to file, or firms withdrew before filing, 11 applications that required clinical data, and 5 applications that either did not require clinical data or that were supplements requiring clinical data. The full applications refused for filing or withdrawn before filing pay one-fourth the full application fee and are counted as one-fourth of an application; the applications that do not require clinical data and the supplements refused for filing or withdrawn before filing pay one-eighth of the full application fee and are each counted as one-eighth of an application.

Using this methodology, the number of full application equivalents that were submitted for review in FY 2000 was 196.4, before any exemptions, waivers or reductions. Under the PDUFA II, FDA waives application fees for certain small businesses submitting their first application and for certain orphan products. Certain application supplements for pediatric indications are also exempt from fees. In addition, the PDUFA II provides a number of other grounds for waivers (public health necessity, preventing significant barriers to innovation, and fees exceed the cost). In FY 2000 waivers or exemptions were applied to 42.9 full application equivalents (14 for orphan products, 8 for small businesses, 12.5 for pediatric supplements, and 8.4 miscellaneous exemptions/waivers). Therefore, for FY 2000, FDA estimates that it received the equivalent of 153.5 (196.4 minus 42.9) full application equivalents that will

pay fees, after allowing for exemptions, waivers and reductions.

A linear regression line based on the adjusted number of fee-paying full application equivalent submissions since 1993, and including our FY 2000 total of 153.5 fee-paying full application equivalents, projects the receipt of 163.6 fee-paying full application equivalent (FAE) submissions in FY 2001, as reflected in table 1 of this document and graph below.

TABLE 1.

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001
Adjusted fee-paying FAE's	101.0	108.9	112.5	136.3	161.5	118.5	150.9	153.5	
Regression line	104.5	111.9	119.3	126.7	134.1	141.5	148.9	156.2	163.6

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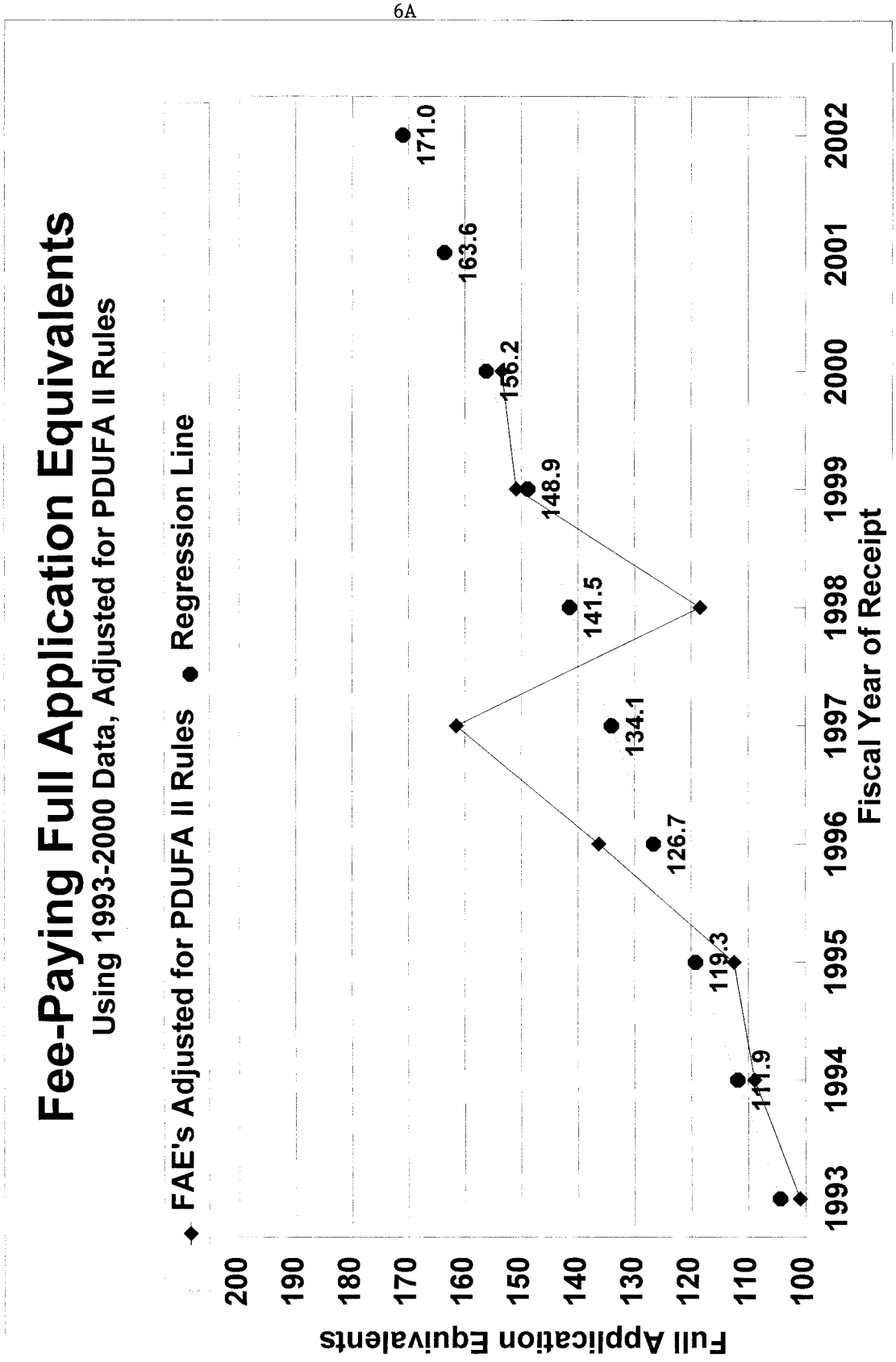
6A

Regression Analysis/Projection based on Actual Data through FY 2000



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The total FY 2001 application fee revenue is estimated by multiplying the adjusted application fee rate ($309,647) by the equivalent number of applications projected to qualify for fees in FY 2001 (163.6), for a total estimated application fee revenue in FY 2001 of $50,658,249. This is the amount of revenue that FDA is also expected to derive both from establishment fees and from product fees.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of the PDUFA II, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in the PDUFA II fee revenue. To date, collections for FY 1998 total $117,446,776—a total of $324,776 in excess of the appropriation limit. This is the only fiscal year since 1997 in which FDA has collected more in the PDUFA II fees than Congress appropriated.

FDA also has requests for waivers or reductions of FY 1998 fees pending that, if granted, would eliminate the excess collections. For this reason FDA is not reducing its FY 2001 fees to offset excess collections at this time. An offset will be considered next year, when fees for FY 2002 are established, if FDA still has collections in excess of appropriations for FY 1998 after the pending requests for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2000, the establishment fee was based on an estimate of 318 establishments subject to fees. For FY 2000, 372 establishments qualified for and were billed for establishment fees, before all decisions on requests for waivers or reductions were made. FDA estimates that a total of 25 establishment fee waivers or reductions will be made in FY 2000, for a net of 347 fee-paying establishments, and will use this number for its FY 2001 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($50,658,249), by the estimated 347 establishments, for an establishment fee rate for FY 2001 of $145,989 (rounded to the nearest dollar).

B. Product Fees

At the beginning of FY 2000, the product fee was based on an estimate that 2,262 products would be subject to product fees. By the end of FY 2000, 2,369 products qualified and were billed for product fees before all decisions on requests for waivers or reductions were made. Assuming that there will be about 55 waivers and reductions made, FDA estimates that 2,314 products will qualify for product fees in FY 2000, after allowing for waivers and reductions, and will use this number for its FY 2001 estimate. Accordingly, the FY 2001 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($50,658,249) by the estimated 2,314 products for a product fee rate of $21,892 (rounded to the nearest dollar).

VI. Adjusted Fee Schedule for FY 2001

The fee rates for FY 2001 are set out in table 2 of this document:

TABLE 2.

Fee Category	Fee Rates for FY 2001
Applications	
Requiring clinical data	$309,647
Not requiring clinical data	$154,823
Supplements requiring clinical data	$154,823
Establishments	$145,989
Products	$21,892

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA II that is submitted after December 31, 2000, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909) Mellon Client Service Center rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This is a new Mellon Bank Address for courier delivery only.)

Please make sure that the FDA P.O. Box number (PO Box 360909) is on the enclosed check.

FDA will bill applicants who submitted lower application fees from October 1 to December 31, 2000, for the difference between the amount they submitted and the amount specified in the Adjusted Fee Schedule for FY 2001.

B. Establishment and Product Fees

By December 31, 2000, FDA will issue invoices for establishment and product fees for FY 2001 under the new Adjusted Fee Schedule. Payment will be due by January 31, 2001. FDA will issue invoices in October 2001 for any products and establishments subject to fees for FY 2001 that qualify for fees after the December 2000 billing.

Dated: December 7, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31949 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1632]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)'' (VICH GL24); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance for industry (#117) entitled ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)'' (VICH GL24). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance is intended to describe the reporting system for identification of possible adverse events following the use of marketed veterinary medicinal products (VMP's) submitted to the European Union, Japan, and the United States.

DATES: Submit written comments concerning the draft guidance to ensure their adequate consideration in preparation of the final document by January 17, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

Copies of the draft guidance entitled ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)'' (VICH GL24) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6524, e-mail: candres1@cvm.fda.gov.

Regarding the guidance document: Neal Bataller, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0163, e-mail: nbatalle@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically-based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the approval of VMP's in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on AER's

The VICH Steering Committee held a meeting on June 15, 2000, and agreed that the draft guidance entitled ''Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)'' (VICH GL24) should be made available for public comment.

The draft guidance is intended to describe the harmonized and common systems, common definitions, and standardized terminology within pharmacovigilance. Harmonization of those elements between the VICH regions facilitates the reporting responsibilities for the marketing authorities or drug sponsors, many with worldwide activities. More specifically, the draft guidance presents the terms and definitions intended to harmonize other previously used terms referring to similar pharmacovigilance concepts. The draft guidance describes the various components of information flow within the pharmacovigilance system. Finally, the draft guidance defines data elements that are sufficiently comprehensive to cover complex reports from most sources for the purpose of electronic transmission. (This information collected is authorized by OMB Control No. 0910–0012).

III. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). For example, the documents have been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.'' Similarly, words such as ''requirement'' or ''acceptable'' or phrases such as ''minimum standards'' or ''minimum needed'' have been replaced by ''recommendation'' or ''recommended'' as appropriate to the context.

The draft guidance represents the agency's current thinking on the management of AER's of approved new animal drugs. This draft guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance is being distributed for comment purposes only and is not intended for implementation

at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final guidance by January 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32056 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1629]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidances for Industry on ''Effectiveness of Anthelmintics: Specific Recommendations for Feline'' (VICH GL20) and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry'' (VICH GL21); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of two draft guidances for industry (Nos. 113 and 114, respectively) entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Feline'' (VICH GL20) and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry'' (VICH GL21). These related draft guidance documents have been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). They are intended to standardize and simplify methods used in the evaluation of new anthelmintics submitted for approval to the European Union, Japan, and the United States.

DATES: Submit written comments on the draft guidance documents by January 17, 2001, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance documents entitled ''Effectiveness of Anthelmintics: Specific Recommendations Feline'' (VICH GL20) and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry'' (VICH GL21) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the draft guidances to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514, e-mail: sthompso@cvm.fda.gov, or Carole R. Andres, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–2977, e-mail: candres1@cvm.fda.gov.

Regarding the guidance documents: Thomas Letonja (HFV–135), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7576, e-mail: tletonja@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory recommendations. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical recommendations for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical recommendations for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Anthelmintics

The VICH Steering Committee held a meeting from June 14 through 16, 2000, and agreed that the two draft guidance documents entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Feline'' (VICH GL20) and ''Effectiveness of Anthelmintics: Specific Recommendations for Poultry'' (VICH GL21) should be made available for public comment.

The two draft guidances, VICH GL20 and VICH GL21, should be read in conjunction with the ''Effectiveness of Anthelmintics: General Recommendations (EAGR)'' (64 FR 38445, July 16, 1999). The guidances for feline and poultry are part of the EAGR, and the aim of these two draft guidances is to: (1) Be more specific for certain issues not discussed in the general

guidance, (2) highlight differences with the EAGR on effectiveness data recommendation, and (3) give explanations for disparities with the EAGR. Comments about the draft guidance documents will be considered by the FDA and the VICH Anthelmintic Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidances and publish them as future guidances.

These draft documents, developed under the VICH process, have been revised to conform to FDA's good guidance practices (65 FR 56468, September 19, 2000). For example, the documents have been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommendation'' or ''recommended'' as appropriate to the context.

These draft documents represent current FDA thinking on effectiveness recommendations for certain veterinary anthelmintic medicinal products. These documents do not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

III. Comments

These draft guidance documents are being distributed for comment purposes only and are not intended for implementation at this time. Interested persons should submit to the Dockets Management Branch (address above) written comments regarding the draft guidance documents by January 17, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance documents and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32057 Filed 12–15–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Tobacco Regulation for Substance Abuse Prevention and Treatment—45 CFR Part 96—(OMB No. 0930–0165; Extension, no change)—This final rule provides guidance to States regarding compliance with section 1926 of the Public Health Service Act (42 USC 300x–26) related to sale and distribution of tobacco to minors. The final rule implements section 1926 by specifying the content of the State's annual report on the provisions of the rule and application for block grant funds. The reporting burden shown below represents the average total hours to assemble, format and produce the information for the block grant provision on minors' access to tobacco, in accordance with the requirements of 45 CFR Part 96. These burden hours are counted towards the total burden for the annual Substance Abuse Prevention and Treatment Block Grant Application Format (OMB No. 0930–0080) for which separate approval is obtained.

45 CFR Citation	Number of responses	Respondents/ respondent	Hours/ response	Total hour burden
Annual report:				
96.122(f)	59	1	0	[1] 0
96.130(e)(1–3)	59	1	15	885
State Plan:				
96.122(g)(21)	0	0	0	[2] 0
96.130(e)(4–5)	59	1	14	826
96.130(g)	59	1	5	295
Total			34	2,006

[1] This section describes requirements for the first applicable, which has passed for all States. Therefore, no burden is associated with this section.

[2] This section duplicates the information collection language in section 96.130(e). The burden is shown for 96.130(e).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–32103 Filed 12–15–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under

OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Substance Abuse Prevention and Treatment Block Grant Regulations—45 CFR part 96 (OMB No. 0930–0163; Extension, no change)—This interim final rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x21–35 and 51–64 by specifying the content of the States' annual report on and application for block grant funds. The reporting burden hours are counted towards the total burden for the Substance Abuse Prevention and Treatment Block Grant Application Format (OMB No. 0930–0080) for which separate approval is obtained. The total annual reporting and recordkeeping burden estimate is shown below:

45 CFR Citation	Number of respondents	Responses/ respondent	Hours/ response	Total hour burden
Reporting Burden				
Annual Report:				
96.122(d) [1]	60	1	0	0
96.122(f); 96.126(f)	60	1	152	9,120
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9,720
96.124(c)(1)	60	1	40	2,400
96.127(b)	60	1	8	480
96.131(f)	60	1	8	480
96.133(a)	60	1	80	4,800
Waivers: [2]				
96.122(d)	26	1	1	26
96.124(d)	0	1	40	0
96.132(d)	0	1	16	0
96.134(b)	3	1	40	120
96.135(d)	0	1	8	8
Total Reporting Burden [3]	60	1	.....	28,106
Recordkeeping Burden				
96.129(a)(13)	60	1	16	960

[1] There was a one-time burden associated with change of the due date for the annual report effective with the FY 2001 application.
[2] The number of respondents per year for the waiver requests is based on actual experience over the past several years.
[3] All reporting burden is associated with the annual report, State plan, and waivers is approved under OMB control number 0930–0080. Only the information collection language in the regulation and the recordkeeping burden are approved under OMB control number 0930–0163.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–32104 Filed 12–15–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of Permits, to Incidentally Take Threatened and Endangered Species, to the City of Sacramento and Sutter County in Association with a revised Natomas Basin Habitat Conservation Plan, Sacramento and Sutter Counties, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service (Service), is considering approval of a revised Natomas Basin Habitat Conservation Plan (Plan) and re-issuance of an Endangered Species Act Incidental Take Permit (Permit), under section 10(a)(1)(B) of the Endangered Species Act, to the City of Sacramento (City) and issuing a Permit to Sutter County. These municipalities have the majority of land use authority in the Natomas Basin. The permit would authorize incidental take of listed species and unlisted species that may be listed in the future. Incidental take of listed species could occur as a result of urban development, certain on-going rice farming activities, and management of habitat reserves.

Pursuant to the National Environmental Policy Act, the Service intends to prepare an Environmental Impact Statement addressing the proposed action of approving the Plan and issuing Permits. The Plan covers the entire 53,341-acre Natomas Basin, including portions of the City and Sacramento and Sutter Counties that occur within the basin. The Environmental Impact Statement will also serve as an Environmental Impact Report under the California Environmental Quality Act. The Plan addresses the incidental take of the federally listed threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), the endangered vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), conservancy fairy shrimp

(*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Colusa grass (*Neostapfia colusana*), Sacramento Orcutt grass (*Orcuttia viscida*), slender Orcutt grass (*Orcuttia tenuis*), and 16 currently unlisted species and their habitats resulting from development, certain agricultural activities, and species and habitat management actions in the Natomas Basin. The Plan includes a process for covering third party development and agricultural activities within the two jurisdictions that are carried out in conformance with the Plan.

This notice describes the proposed action and possible alternatives, invites public participation in the scoping process for preparation of the joint Environmental Impact Statement/ Environmental Impact Report, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action should be directed.

DATES: Written comments are encouraged and should be received on or before January 16, 2001.

Public Meeting: The Service, City, and Sutter County will hold public scoping meetings on January 3, 2001, 2:00 p.m. to 5:00 p.m., Holt Tractor Manufacturing, large conference room, 7310 Pacific Avenue, Pleasant Grove, California; and, January 4, 2001, 2:00 p.m. to 5:00 p.m. and 6:00 p.m. to 8:00 p.m., City of Sacramento, 1231 I Street, First Floor, Room 102, Sacramento, California. Verbal and written comments will be accepted at the meetings. For additional meeting information, contact Vicki Campbell, Division Chief, Conservation Planning at (916) 414–6600.

ADDRESSES: Information, written comments, or questions related to the preparation of the Environmental Impact Statement/Environmental Impact Report and the National Environmental Policy Act process should be submitted to Vicki Campbell, Division Chief, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Lori Rinek or Kelly Hornaday, Fish and Wildlife Biologists, Sacramento Fish and Wildlife Office at (916) 414–6600. Persons wishing to obtain background materials should contact Grace Hovey, City of Sacramento, 1231 I Street, Suite 300, Sacramento, California 85814 at (916) 264–7601, or Jeff Pemstein, Sutter County, 10461 Old Placerville Road, Suite 110, Sacramento, California 95827 at (916) 361–8384, extension 203.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Prior to adoption of the Plan and the Service's issuance of the Permit to the City in December 1997, an Environmental Assessment was prepared by the Service in accordance with the National Environmental Policy Act and a Negative Declaration was prepared by the City pursuant to the California Environmental Quality Act. A Federal court ruling on August 15, 2000, held that the Service's decisions to issue the Permit to the City and its decision not to prepare an Environmental Impact Statement for the project were arbitrary and capricious. The City and Sutter County are preparing a revised Plan for the Natomas Basin that will address the court's concerns and support the issuance of Permits to both the City and Sutter County. The goals of the Plan, as revised, are to conserve listed and unlisted species and their habitat in the basin while accommodating compatible development and certain on-going agricultural activities.

The Plan study area comprises the entire 53,341-acre Natomas Basin within both Sacramento and Sutter Counties, California. Agriculture is the dominant land use in the Natomas Basin. The predominant crops are rice, corn, sugar beets, grain, tomatoes, and pasture land. Natural and uncultivated vegetation types are interspersed throughout the agricultural areas of the Natomas Basin. Natural areas are found primarily along irrigation canals, drainage ditches, pasture lands, and uncultivated fields. Narrow strips of emergent vegetation and/or wooded riparian areas are associated with borders of the irrigation canals and drainage ditches.

Portions of the Natomas Basin that are within the jurisdiction of the City were included in the original December 1997 Plan and Permit. The City is seeking re-issuance of its Permit for urban development activities and certain on-going rice farming activities, and Sutter County is seeking issuance of a Permit for urban development and rice farming in its portion of the Natomas Basin. In addition, a separate Permit application is under review by the Service for the Metro Air Park Property Owners Association. The Metro Air Park application proposes participation in the Basin-wide conservation program. The Metro Air Park Permit would cover the urbanization of approximately 2,000 acres of land within the Natomas Basin portion of unincorporated Sacramento County. The total acreage within the basin for which take resulting from urban development activities is being sought under the revised Natomas Basin Plan and the Metro Air Park Plan is 17,500 acres.

Under the Plan, the effects of urbanization and other activities are expected to be minimized and mitigated through the City and Sutter County's participation in a Basin-wide conservation program, which will be described in the revised Plan. The focus of this Basin-wide conservation program is the preservation and enhancement of ecological communities that support species associated with wetland and upland habitats. Through the payment of development fees, one-half acre of mitigation land is expected to be established for every acre of land developed within the Basin. The mitigation land will be acquired by the Natomas Basin Conservancy, a non-profit conservation organization established in 1998 to implement the original Plan. Mitigation fee amounts, and the mitigation and minimization strategies will be subject to the adjustment required under the Plan, as revised. The Plan also contains take avoidance and minimization measures that include the requirements for developers and landowners to conduct pre-construction surveys and to carry out minimization measures prior to site development.

The City, County, and Service have selected CH2M Hill to prepare the joint Draft Environmental Impact Statement/ Environmental Impact Report. The Environmental Impact Statement will be prepared in compliance with the National Environmental Policy Act and the Environmental Impact Report will be prepared in compliance with the California Environmental Quality Act.

Although CH2M Hill will prepare the Draft Environmental Impact Statement/ Environmental Impact Report, the Service will be responsible for the scope and content of the Environmental Impact Statement, and the City and County will be responsible for the scope and content of the Environmental Impact Report.

The Environmental Impact Statement/ Environmental Impact Report will consider the proposed action (issuance of section 10(a)(1)(B) Endangered Species Act permits to the City and Sutter County), and a reasonable range of alternatives as summarized below. Plan components related to the court's ruling that will be addressed, include the following:

1. The Plan's mitigation fee structure, mitigation land ratio, and rice farming best management practices;
2. The viability of the Plan if fewer than all of the three jurisdictions with land in the basin participate in the Plan with respect to mitigation fees, the quality and location of habitat that would be lost and preserved under the Plan, and the impacts to the covered species and their habitats;
3. Analysis of the species and the quality, quantity and location of habitat within each jurisdiction;
4. Analysis of the effect on giant garter snakes if the Plan's goals of large, connected blocks of reserve lands cannot be met, and the design of a process to be built into the plan to assure its habitat goals are achieved;
5. Analysis of the midcourse review procedure incorporated into the plan to respond to new information and address implementation issues if the City (or Sutter County) is the only permittee; and
6. Analysis of the effectiveness of the monitoring and adaptive management provisions of the Plan if the City (or Sutter County) is the sole permittee.

Potential alternatives may include a decreased development alternative, an increased mitigation ratio alternative, and a No Action alternative. Under the No Action alternative, the Service would not issue section 10(a)(1)(B) permits to the City and Sutter County in the Natomas Basin.

Environmental review of the revised Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), National Policy Act regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement/ Environmental Impact Report.

Comments and participation in the scoping process are hereby solicited. The 1997 Plan, upon which the revised Plan is based, was subject to extensive public review. However, because of likely changes in the Plan, including addition of the benefits of the ''No Surprises'' regulation (63 FR 8859) and the Services' ''Five-Point Policy'' (65 FR 35242), additional public review and input is being sought.

The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives to be addressed in the Draft Environmental Impact Statement/Environmental Impact Report.

Dated: December 11, 2000.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–32095 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1050–PF–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0182

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of an existing approval to collect certain information from Alaska Natives interested in conducting reindeer grazing activities on BLM administered lands. This information allows BLM to begin the assessment of the compatibility of reindeer grazing on public lands with multiple-use objectives (43 CFR 4300).

DATES: You must submit your comments to BLM at the appropriate address below on or before February 16, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comment may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0182'' your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Larry Field, BLM Northern Field Office, on (907) 474–2343 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Field.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2812 to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500 *et seq.*) authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for Natives of Alaska. The Act also authorizes the Secretary to issue permits to those Natives for grazing reindeer on public lands. The implementing regulations at 43 CFR 4300 authorize Alaska Natives to apply to BLM for permits to graze reindeer and to construct improvements on the land.

The Grazing Lease or Permit Application (Form 4210–1) and the Reindeer Grazing Permit (Form 4132–2)

are designed to record all information required under 43 CFR 4300.20 and 43 CFR 4300.57. BLM uses the information provided by the applicant(s) and permittee(s) to determine whether applicant qualifies to receive a reindeer grazing permit and whether permittee meets the specified terms and conditions of the granted permit.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected estimates to average 1 hour per application and 15 minutes for the permit. The respondents are Alaska Natives. The frequency of response is once every 5 years for the renewal applications and once per year for the reindeer grazing permits. The estimated number of responses per year totals 18. The estimated total annual burden is 23 hours (5 hours annual burden on permittees and 18 hours to apply for the renewal of existing reindeer grazing permits). BLM specifically requests your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 12, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–32004 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–057–1040–PH–GP1–0020]

OMB Approval Number 1004–XXXX; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On August 3, 2000, BLM published a notice in the **Federal Register** (65 FR 47796) requesting comment on this proposed collection. The comment period ended on October 2, 2000. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Bureau of Land Management's Program Evaluation for the National Riparian Service Team and Extended Riparian Network, OMB approval number: 1004–NEW.

Abstract: The Bureau of Land Management is proposing a new information collection for the purpose of conducting a program evaluation for the National Riparian Service Team (NRST) and the extended reparian network. The BLM will conduct surveys and interviews of individuals who work within or receive services from the interagency NRST or the extended riparian network. The information will allow the BLM to measure satisfaction and program effectiveness, and comply with the requirements and spirit of the Government Performance and Results Act of 1993 and Executive Order No. 12862. Questions will address the following areas: (1) Satisfaction with the team as a facilitator of cooperative riparian restoration/management; (2) program effectiveness (*e.g.,* on-the-ground implementation and/or achievement of interim steps toward implementation of riparian management strategies; impact of thought process, PFC as a tool for creating a common vocabulary, for facilitating effective cooperation); and (3) general demographic information.

Bureau Form Number: None.

Frequency: Once every other year (biennial).

Description of Respondents: The respondents will be individuals who work with or receive services from the National Riparian Service Team or the extended riparian network, including: Federal, State, Local and Tribal Government employees; individuals affiliated with non-profit organizations; and members of the general public. Estimated completion time: (survey) 25 minutes/.42 hours per respondent (500 respondents), and (interview) 45 minutes/.75 hours per respondent (40 respondents).

Annual Responses: 540 (bennial).

Filing Fee Per Response: None.

Annual Burden Hours: 250 (biennial).

Bureau Clearance Officer: Michael Schwartz, 202–452–5033.

Dated: October 26, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–32097 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–79203]

Utah—Notice of Invitation To Participate In Coal Exploration Program; Lodestar Energy, Inc.,

Lodestar Energy, Inc. is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 13S., R. 7E., SLM, UT
Sec. 19, E2SE, SWSE, SESW;
Sec. 20, W2SW;
Sec. 29, NWNW;
Sec. 30, E2, NENW.

Containing 640.00 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, and to Dave Miller, Lodestar Energy, Inc., White Oak Mine, HC 35 Box 370, Helper, Utah 84526. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the

provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Lodestar Energy, Inc., detailing the scope and timing of this exploration program, is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake city, Utah, under serial number UTU–79203.

Douglas M. Koza,

Deputy State Director, Division of Natural Resources.

[FR Doc. 00–32105 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–AC]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday and Saturday, Feb. 2 and 3, 2001, in the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins Friday, Feb. 2, at 10 a.m. in the Conference Room of the Eagle Lake Field Office. Agenda items include an overview of livestock grazing consultation requirements, a status report on rangeland health assessments, an update on water quality management planning, a report on conservation planning for sage grouse, a report on a juniper shearing test, and discussions about off-highway vehicle management. Members of the public can also comment on these or other public lands management issues during the public comment period. Depending on the number of persons wishing to speak, a time limit may be established.

On Saturday, Feb. 3, the council will convene at 9 a.m. at the same location for a public forum on juniper management. Speakers will provide information on the current extent of juniper stands in northeastern California, and provide perspectives on management.

FOR FURTHER INFORMATION CONTACT: BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–32192 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 30749]

Public Land Order No. 7467; Withdrawal of National Forest System Lands for San Francisco Peaks/Mount Elden Recreation Area; Arizona; Correction

Correction

In notice document 00–26435 on page 61181 in the issue of Monday, October 16, 2000, make the following correction:

On page 61181, in the third column, in the 15th line from the top, replace ''NE¼SE¼'' with ''NW¼SE¼''.

Dated: December 6, 2000.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 00–32058 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(SDM 44591)

Notice of Proposed Withdrawal Extension; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to extend Public Land Order No. 5793 for an additional 20-year period. This order withdrew National Forest System land from location or entry under the United States mining laws for protection and development of the Terry Peak Electronic Site.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: On December 8, 2000, the Forest Service filed an application to extend Public Land Order No. 5793 for an additional 20-year period. Public Land Order No. 5793 withdrew the following-described National Forest System land from location or entry under the United States mining laws, subject to valid existing rights:

Black Hills National Forest

Black Hills Meridian

T. 4 N., R. 2 E.,

Sec. 11, a portion of the NE¼ covered by M.S. 2025, excluding lots 1, 2, and 3.

The area described contains 25 acres in Lawrence County.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: December 12, 2000.

Howard A. Lemm,

Chief, Branch of Land Resources.

[FR Doc. 00–32106 Filed 12–15–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Cancellation of December Meeting and Notice of Meetings for Calendar Year 2001

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, December 26, 2000 at Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California is canceled.

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2001 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 23	San Francisco, CA.
Saturday, January 27	Point Reyes, CA.
Tuesday, February 27.	San Francisco, CA.
Tuesday, March 27 ..	San Francisco, CA.
Tuesday, April 24	San Francisco, CA.
Saturday, May 5	Point Reyes, CA.
Tuesday, May 22	San Francisco, CA.
Tuesday, June 26	San Francisco, CA.
Tuesday, July 24	San Francisco, CA.
Tuesday, August 28	San Francisco, CA.
Tuesday, September 25.	San Francisco, CA.
Saturday, October 20	Point Reyes, CA.

Tuesday, October 23	San Francisco, CA.
Tuesday, November 27.	San Francisco, CA.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service areas in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Fred Rodriguez
(one position vacant)

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, January 27, Saturday, May 5 and Saturday, October 20 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancelations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated agenda items at meetings during calendar year 2001 may include:

- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Updates on Presidio Vegetation Management Plan
- Updates on Marin Comprehensive Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Reports on Presidio Mott Visitor Center and Crissy Field Education Center
- Reports on GGNRA education programs
- Update on Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center
- Update Reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- Reports on park equestrian permits
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Pacifica Boundary Expansion Public Comment and Commission Action
- Issues affecting San Mateo County national park lands
- Update reports on ''Park Partner'' programs, including Bay Area Discovery Museum plans and Marine Mammal Center planning
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Updates on Presidio Trails Master Plan and Presidio Mountain Lake projects
- Updates on issues concerning areas managed by the Presidio Trust, and
- updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 5, 2000.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 00–32186 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Arizona in the Possession of San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of San Diego State University, San Diego, CA.

This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff in consultation with representatives of the Tohono O'odham Nation of Arizona.

At an unknown date, human remains representing a minimum of one individual were recovered from site SDSU–0370 (1959–2), in the vicinity of Hujuli Juk, Casa Grande/Gila Butte, AZ, by person(s) unknown under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were recovered from site SDSU–0371 (19701–10), in the vicinity of Tucson, AZ, by persons unknown under unknown circumstances. No known individuals were identified. The two associated funerary objects are a cremation olla and a projectile point.

Based on manner of interment, these individuals have been identified as Native American. Geographic affiliation is consistent with the historically documented territory of the Tohono O'odham Nation of Arizona.

Based on the above-mentioned information, officials of San Diego State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of San Diego State University also have determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of San Diego State University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tohono O'odham Nation of Arizona.

This notice has been sent to officials of the Tohono O'odham Nation of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynne E. Christenson, Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–4443, telephone (619) 594–2305, before January 17, 2001. Repatriation of the human remains and associated funerary objects to the Tohono O'odham Nation of Arizona may begin after that date if no additional claimants come forward.

Dated: December 7, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32112 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of San Diego State University, San Diego, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff in consultation with representatives of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California.

In 1977, human remains representing a minimum of one individual were recovered from site SDSU–0036, SDI–946, SDMM–W–149, in the vicinity of La Costa, CA, during the La Costa North project undertaken by RECON, a local environmental firm. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, geographic location, ethnographic information, and oral history evidence presented during consultation, these human remains have been identified as Native American and the individual represented by these remains has been identified as Luiseno. Luiseno have continuously occupied this territory since their arrival in San Diego County and within this time period are represented by late prehistoric lithics and an absence of ceramics.

In 1980, human remains representing a minimum of one individual were recovered from SDSU–0039, SDI–5612 (W–1667), in the vicinity of Del Mar, CA. The excavation was conducted by RECON for the Pardee Construction Company as part of the San Dieguito Estates Project. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, geographic location, ethnographic information, and oral history evidence presented during consultation, these remains have been identified as Native American and the individual represented by these remains has been identified as Luiseno. Luiseno have continuously occupied this territory since their arrival in San Diego County and within this time period are represented by late prehistoric lithics and an absence of ceramics.

In 1979, human remains representing a minimum of one individual were recovered from the Circle R site, SDSU–0269, SDI–5069, in the vicinity of Gopher Canyon, CA. Excavations were conducted by RECON. No known individual was identified. No associated funerary objects are present.

Based on geographic location, ethnographic information, and oral history evidence presented during consultation, these remains have been identified as Native American and the individual represented by these remains has been identified as Luiseno. Luiseno have continuously occupied this territory since their arrival in San Diego County and within this time period are represented by late prehistoric lithics and an absence of ceramics.

Based on the above-mentioned information, officials of the San Diego State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of San Diego State University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California.

This notice has been sent to officials of the La Jolla Band of Luiseno Misssion Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California. Representatives of any other Indian tribe that believes

itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynne Christenson, Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–0701, telephone (619) 594–2305, before January 17, 2001. Repatriation of the human remains and associated funerary objects to the La Jolla Band of Luiseno Misssion Indians of the La Jolla Reservation, California; the Pala Band of Luiseno Mission Indians of the Pala Reservation, California; the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation California; the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California may begin after that date if no additional claimants come forward.

Dated: December 7, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 00–32111 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Dates and Location: The AMWG will conduct one public meeting as follows:

Phoenix, Arizona—January 11–12, 2001. The meeting will begin at 9:30 a.m. and conclude at 4 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the following: management objectives, basin hydrology, FY 2002 budget, development of the AMP Strategic Plan, environmental compliance, Fish and Wildlife Service recovery goals, and other administrative and resource issues pertaining to the AMP.

Dates and Location: The Glen Canyon Technical Work Group will conduct the following public meetings:

Phoenix, Arizona—January 9–10, 2001. The meeting on January 9th will begin at 10 a.m. and conclude at 5 p.m. and will be held at the Crowne Plaza Hotel, Pueblo Room, 100 N. First Street, Phoenix, Arizona. The meeting on January 10th will begin at 8 a.m. and conclude at 5 p.m. and will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to continue work on the Strategic Plan (in preparation for the AMWG Meeting) and other administrative and resource issues.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation's website under Environmental Programs at: *http://www.uc.usbr.gov.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG and AMWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: December 13, 2000.

Christopher L. Kenney,

Acting Commissioner.

[FR Doc. 00–32187 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pick-Sloan Missouri Basin Program, Eastern and Western Division Proposed Project Use Power Rate

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Proposed Pick-Sloan Missouri Basin Program, Eastern and Western Division, Project Use Power Rate Adjustment.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing a rate adjustment (proposed rate) for Project Use Power for the Pick-Sloan Missouri Basin Program (P–SMBP), Eastern and Western Division. The proposed rate for Project Use Power is to recover all annual operating, maintenance, and replacement expenses. The analysis of the proposed Project Use Rate is included in a booklet available upon request. The proposed rate for Project Use Power will become effective April 1, 2001.

This notice provides the opportunity for public comment. After review of comments received, Reclamation will consider them, revise the rates if necessary, and recommend a proposed rate for approval to the Commissioner of the Bureau of Reclamation.

DATES: The comment period will begin with publication of this notice in the **Federal Register**. To be assured consideration, please submit comments on or before January 17, 2001.

ADDRESSES: Written comments should be sent to Jim L. Wedeward, GP–2020, Power O&M Administrator, Bureau of Reclamation, P.O. Box 36900, Billings MT 59107–6900.

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.

All booklets, studies, comments, letters, memoranda, and other documents made or kept by Reclamation for the purpose of developing the proposed rate for Project Use Power will be made available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59107–6900.

FOR FURTHER INFORMATION CONTACT: Jim L. Wedeward (406) 247–7705, Internet: jwedeward@gp.usbr.gov.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (c)) and the Flood Control Act of 1944 (58 Stat. 887).

Beginning April 1, 2001, Reclamation proposes to:

(a) Increase the energy charge from 2.5 mills/kWh to 10.76 mills/kWh

(b) the monthly demand charge will remain at zero.

The Project Use Power rate will be reviewed each time Western Area Power Administration (Western) adjusts the P–SMBP Firm power rate. Western will conduct the necessary studies and use the methodology identified in this rate proposal to determine a new rate.

The existing rate schedule MRB–P10 placed into effect on November 1, 1986, will be replaced by rate schedule MRB–P11.

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and Reclamation's Regulations (10 CFR Part 1021), Reclamation has determined that this action is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement.

Dated: December 12, 2000.

Gerald W. Kelso,

Assistant Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. 00–32107 Filed 12–15–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Generic clearance for customer service surveys.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by January 31, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be delivered to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 16, 2001. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Generic Clearance for Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. File No. OMB–9. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information is collected using customer service surveys to assess needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 12, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–32054 Filed 12–15–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Petition for nonimmigrant worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by December 26, 2000. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until February 16, 2001. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or a for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour and 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 12, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–32055 Filed 12–15–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Inviting Proposals for Selected Demonstration Projects for Youth Offenders

AGENCIES: Employment and Training Administration, Department of Labor.

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: This notice contains all of the necessary information and forms to apply for grant funding. The U.S. Department of Labor, Employment and Training Administration is authorized to award grants to provide services aimed at youth who are or have been under criminal justice supervision or involved in gangs. Therefore, youth employment and developmental activities funded under this grant will be used for a structured set of activities focused primarily on placing youth offenders, gang members, and at-risk youth ages 14–24 employment into long term (part-time for ages 14–15) at wage levels that will (1) prevent future dependency and/or (2) break the cycle of crime and juvenile delinquency that contributes to recidivism and non-productive activities. The Department of Labor (DOL) has worked with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the U.S. Department of Justice (DOJ) in deciding to use these funds for three categories of projects to serve youth offenders. These categories are: I.— Model Community Projects; II.—Education and Training for Youth Offenders Initiative; and III.—Community-Wide Capacity Building Projects.

For Categories I and III, Workforce Investment Boards (WIBs), political subdivisions of the State, and private entities are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private

colleges and universities, and other qualified private organizations. Private entities include non-profit organizations but do not include for-profit organizations or individuals. For Category II, State or local juvenile justice agencies or juvenile correctional agencies shall be the eligible applicant and should identify one juvenile correctional facility within their state where the project will operate. Applicants can only apply under one of these categories which must be clearly identified on the face sheet of the application. Local workforce investment areas who were awarded grants to administer Youth Offender Demonstration Projects in 1999 are ineligible to apply under this Solicitation.

DATES: The closing date for receipt of applications is February 28, 2001 at 4:00 p.m. Eastern Standard Time (EST) at the address below.

ADDRESSES: Applications must be mailed to Denise Roach, U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210, Reference: SGA/DFA–01–101.

FOR FURTHER INFORMATION CONTACT: Technical questions should be faxed to Denise Roach, Division of Federal Assistance, Fax (202) 693–2879. This is not a toll-free number. All inquiries should include the SGA number SGA/DFA 01–101 and a contact name and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's web site, to access: 1. *http://www.doleta.gov*; 2. Click Grant & Contract Applications; 3. Click Competitive Grant Opportunities; 4. Grant Forms. Award notifications will also be published on the web site.

Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it: (a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications *e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post-marked by the 15th of the month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to the specified address not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''post-marked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M. (Eastern Standard Time), on the closing date at the specified address.

Telegraphed and/or faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Review and Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the established criteria under each Category. The panel results are advisory in nature and are not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussion, an award will be based on the offeror's signature on the SF 424. The final decision on awards will be based on what is most advantageous to the Federal Government, taking into account factors such as geographic diversity, mix of Empowerment Zones (EZs) and Enterprise Communities (ECs), and demographic characteristics.

Cost sharing/leveraging funds: Applicants also should discuss their plans to leverage and align with other funds or resources in order to build permanent partnerships for the continuation of services, and should provide some discussion of the nature of these leveraged resources, *i.e.*, Federal, non-Federal, cash or in-kind, State and county, foundation, capital equipment, and other matching funds. For example, the Federal Bonding Program and the Work Opportunity Tax Credit (WOTC) should be considered as potential tools to assist with youth offender employment placements. Information about these programs may be found on ETA's website at http://www.doleta.gov.

Reporting requirements: Applicants must clearly define their procedures for reporting progress on a monthly basis (including data elements listed in **SUPPLEMENTARY INFORMATION** and for identifying and presenting the results of project interventions. Proposals should also describe in detail the specific reports and other deliverables to be provided to ETA as documentation of progress and results in terms of improved outcomes for the target population. An implementation plan to be submitted within 60 days of the grant execution, monthly reports, an annual report, and a final report summarizing progress are required for projects under this SGA.

SUPPLEMENTARY INFORMATION: Approximately $8,250,000 is available for all three categories. Funding for these awards is authorized under the Workforce Investment Act (WIA). Applicants must clearly identify which category they are applying for. This information must appear on the face sheet of the application. It is strongly recommended that each application be submitted using the face sheet included in appendix ''A'' because it will greatly enhance the review process.

As a condition for award, all applicants must agree to participate in a separately funded evaluation. Applicants should not set aside funds for evaluation activities. All applicants must provide assurances in their proposals that they will cooperate with the evaluators and provide access to the data necessary to the evaluations. Awardees of the grants further agree to make available upon request to DOL-authorized evaluation contractor(s) data for a period not to exceed 24 months beyond the demonstration period (which should not exceed 24 months) through a no-cost extension of the grants.

The availability of this data beyond the demonstration period will enable, if appropriate, the contractor to perform follow-up analysis. In addition, proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages shall include both existing and proposed strategies.

All demonstration sites will be required to collect and maintain participant records through administrative data so that these projects can document results and accomplishments and provide a learning experience for the workforce development system, DOL, and DOJ. These data include:

A. Number recruited;
B. Number enrolled;
C. Number who entered training;
D. Number who entered or reentered secondary school;
E. Number who entered or reentered post-secondary school;
F. Number who entered employment;
G. Number ''served by aftercare'' programs;
H. Number who entered the military;
I. Number referred to other services such as dropout prevention, drug rehabilitation;
J. Number who entered other job training programs;
K. Number referred to apprenticeship programs;
L. Number of in-school youth served; and
M. Number of out-of-school youth served.

In addition, if applicable, data elements associated with the Workforce Investment Act may be required (to be specified in the grantee's statement of work).

Application Submittal

Applicants must submit four (4) copies of their proposal, with original signatures. There are three required sections of the application: Section I—Project Financial Plan; Section II—Executive Summary; and Section III—Project Narrative (including Appendices, not to exceed thirty pages). Applications that fail to meet the requirements will not be considered. The Project Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two (2) single-spaced, single-sided pages. A font size of at least twelve (12) pitch is required throughout.

Part I—Project Financial Plan

Section I of the application must include the following two required elements: (1) Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix B) and (2) ''Budget Information Form.'' (Appendix C) All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funds. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable.

According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance (CFDA) number is 17–249. Section I will not count against the application page limits.

The Financial Plan must describe all costs associated with implementing the project that are to be covered with grant funds. In addition, Section I should include a budget narrative/justification which will detail the cost breakout of each line item on the Budget Information Form. This must provide sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes. The budget must be for the full duration of the project but may not exceed 30 months. All costs should be necessary and reasonable according to the Federal guidelines set forth in the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' (also known as the ''Common Rule''), codified at 29 CFR Part 97 (97.22) and ''Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations'' (also known as OMB Circular A–110), codified at 29 CFR Part 95, (95.27).

Part II—Executive Summary (Format Requirements Limited To No More Than Two Single-Spaced, Single-Sided Pages)

Each application shall provide a project synopsis which identifies the following:

- The applicant;
- Identification of consortium partners and the type of organizations they represent;
- The project service area;
- Whether the service area is an entire local workforce investment area, more than one local area, and/or all local areas in a State;
- The specific areas of focus in the announcement which are addressed by the project;
- The planned period of performance;
- The comprehensive strategy (*e.g.*, who will provide services, who will be accountable for the project, etc.) for providing seamless service delivery and for addressing the multi-faceted barriers to training and employment which affect youth who are or who have been under criminal justice supervision or involved in gangs or who are at-risk of involvement;
- How counseling and other support needs will be addressed in the One-Stop delivery system;
- The actions already taken by the State or Local Workforce Investment Board to address the needs of at-risk youth in the One-Stop delivery system;
- The level of commitment the applicant (including all consortium members, if any) and other partners have to serving at-risk youth;
- The linkages between the project and the local WIA Youth Council through the One-Stop delivery system, as well as linkages with the business and education communities and juvenile justice agencies; and
- A written confirmation that the applicant will cooperate with the evaluators.

Part III—Project Narrative (Format Requirements Limited To No More Than Thirty (30) Double-Spaced, Single-Sided, Numbered Pages)

Section III of the application, the project narrative, shall contain the technical proposal that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice.

Applicants MUST limit the project narrative section to no more than thirty (30) double-spaced and single-sided pages, which include any attachments provided by the applicants. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limit. However, letters of commitment are required from partner/consortia organizations and will not count against the page limit.

Background

The Workforce Investment Act (WIA) of 1998 establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner Peyser Act, Adult Education and Literacy Act, the Rehabilitation Act and supersedes the Job Training Partnership Act (JTPA). WIA provides a framework for a national workforce development system designed to meet both the needs of the nation's businesses and the needs of job seekers who want to further their careers. A number of other Federal programs are also identified as required partners under the One-Stop delivery system with the intention of providing comprehensive services for all Americans to access the information and resources available to them in the development and implementation of their career goals. The intention of the One-Stop delivery system is to establish programs and providers in co-located, coordinated and integrated settings that are coherent and accessible for individuals and businesses alike in approximately 600 workforce investment areas which have been established throughout the nation.

The Workforce Investment Act establishes State and Local Workforce Investment Boards (WIBs) focused on

strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials to build on existing reforms in order to implement innovative and comprehensive One-Stop delivery systems. In addition, Youth Councils, subgroups of the local WIBs, are required to develop parts of the local plan relating to youth, recommend providers of youth services, and coordinate local youth programs and initiatives. With its mandated requirements to form these interdisciplinary Youth Councils and to develop one comprehensive plan for youth services, WIA presents a unique opportunity to change the way workforce investment programs (and other youth development programs as well) are organized and operated to serve youth. WIA and the Youth Councils offer local areas the chance to look at how both in-school and out-of-school youth services are blended and deployed. They provide the framework that local areas can build on in order to realign, enhance, and improve youth services so that they are more closely coordinated, better utilized, and more effective.

In setting aside funds for this Solicitation, Congress noted ''the severe problems facing out-of-school youth in communities with high poverty and unemployment and the inter-relatedness of poverty, juvenile crime, child abuse and neglect, school failure, and teen pregnancy.'' (These grants are included within the Administration's Youth Violence Prevention initiative.) This SGA provides a unique opportunity for selected workforce investment areas to address the needs of a special youth population—youth offenders, gang members, and at-risk youth ages 14–24 through a WIA consorted effort.

Category I—Model Community Projects

Demonstration projects in this category will be based in heavily impoverished communities in need of comprehensive community-wide approaches to assist youth offenders, gang members, and those at risk of becoming involved in gangs. Grantees will be required to expand services in each of 3 areas: (1) Gang prevention and suppression activities; (2) alternative sentencing for first-time offenders; and (3) after-care and case management for incarcerated youth. In addition, grantees shall provide education and mental health services, employment training, sports and recreation, and community services projects in order to reduce recidivism and procure for the target population long-term employment at livable wage levels. The grantees must place particular emphasis on enhancing existing case management and job placement services for youth on probation or for those who are reentering the community from corrections facilities. These support services should be provided throughout the entire employment search continuum, *i.e.*, from the beginning of the employment search until well after the procurement of employment. The projects also will maintain records of the number of contacts made after placement and the type of support services provided.

The projects also will implement an intensive and comprehensive aftercare system to reduce juvenile recidivism. Aftercare systems should be implemented while youth are still incarcerated to establish community links with faith-based organizations, parents or guardians, schools, training and educational opportunities, parole systems, social contacts and activities, and mentors. The aftercare services planned for those individuals incarcerated must involve the staff and administrators of the juvenile corrections facilities where the youth are institutionalized.

Eligible Applicants

Workforce Investment Boards (WIBs), political subdivisions of the State, and private entities are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified private organizations.

Private entities include non-profit organizations but do not include for-profit organizations and individuals. Organizations or areas that operate the Department of Justice's Safe Futures or Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression demonstrations can also apply through their WIBs.

Entities other than a WIB or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the WIB(s) and its Youth Council for the area in which the project is to operate. The term ''in conjunction with'' shall mean that the application must include a signed certification by both the applicant and the appropriate WIB(s) indicating that:

1. The applicant has consulted with the appropriate WIB (and its Youth Council) during the development of the application; and

2. The activities proposed in the application are consistent with, and will be coordinated with, the One-Stop delivery system efforts of the WIB(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the WIB and its Youth Council and indicating that the WIB was provided, during the proposal solicitation period, a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. ''Sufficient opportunity for WIB review and comment'' shall mean at least 30 calendar days. Failure to provide information describing the efforts which were undertaken to consult with WIB(s) will disqualify applicants.

The certification, or evidence of efforts to consult, must be with each WIB in the service area in which the proposed project is to operate. These certifications must be included in the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, evidence of efforts to consult with the WIB must be demonstrated by written documentation, such as registered mail receipt, that attempts were made to share project applications with the WIB in a timely manner. WIB applicants and applicants that provide a signed certification by the applicant and the appropriate WIB(s) will be given preference for award.

Funding Availability

The Department expects to award three (3) grants approximately $1.5 million each under this category.

Performance Period

The period of performance for all grants awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to providing program services to eligible youth as defined in this notice. The final six months will be solely for organizing participant case files, providing the files to the demonstration's evaluator within two months after grant-funded services terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

The grant awards must be used to enhance and augment presently existing strategies which serve youth offenders, out-of-school youth, and gang members or those at-risk of becoming gang-involved. In addition to intensifying current systems, the projects also will link with and build upon available community resources such as educational (including special education), support, workforce development (engaging local WIBs/Youth Councils), child care, and transportation services. The projects will use these community resources to accomplish the successful transition of youth to independent living within the community, a reduction in recidivism, and the accomplishment of employment, training, and education goals. In order to address specifically the distinct needs and problems of youth offenders, gang members, and those at-risk of becoming gang-involved who are living in high-poverty localities, the overarching strategy for the model community projects should encompass the following:

Purpose/Need

Applicants should describe the need in the target neighborhood as demonstrated by issues such as severity of gang problems, the number of youth offenders residing in the target community, and the inability for existing services to address the needs of youth offenders and gang members. Applicants should also relate the need to the overall purpose of the planned program components.

Alternative Sentencing/Education

Grantees should describe their plans for expanding alternative sentencing, including enhanced education services for youth offenders. Project case managers and other staff must prepare the target population for sustainable high-quality employment by providing assistance to remain in school, return to school, enroll in GED and high school equivalency classes, or participate in additional alternative education such as long-distance learning programs or on-line courses.

Applicants should describe the educational services that will be offered by the project, with particular attention given to the utilization of existing educational system services and the involvement of the schools in the area. In addition, applicants should describe the overall use of project case managers and other staff in the planned program components that will provide educational services.

Case Management/Support Services

Project case managers must prepare the target population for sustainable high-quality employment by utilizing intensive training and support services, including drug and alcohol treatment, mentoring and tutoring, child care, counseling, and other case management services. Service strategies should also focus on providing assistance to engage in job training, secure employment, fulfill legal restitution obligations, or establish successful independent living. Because this wide range of services should be provided by the proposed partnerships of community organizations, applicants must submit memoranda of understanding (MOUs) with the local WIA partnership and other critical agencies specifying the role of each party in the project. Applicants must describe the intensive training and support services as identified above that will be offered as part of the planned program components, and should detail the role of project case managers in the provision of these training and support services.

Youth Offender and Gang Prevention Advisory Board

In order to institute a holistic approach to assisting the target population, employment, education, criminal justice, and community-based youth programs must be incorporated into the projects. In developing this interrelated system, grant funds shall be used to create a youth offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership. The advisory board should be comprised of public and private sector representation, parents, youth members, and graduates of other youth offender programs and will link with the local Youth Council to provide seamless delivery of services and maximize use of available resources. Applicants should describe the planned composition of the advisory board, with particular emphasis upon the process for selecting and seating the representation of the board. The applicant should describe the functions of the board and the process planned to utilize the board in designing the holistic delivery expected under the project. Grantees should also describe their plans for expanding gang prevention and suppression efforts in the target community, including expanded efforts by local law enforcement agencies.

Aftercare: Grant funds should link with existing resources to provide intensive aftercare services for youth offenders transitioning from secure confinement in a juvenile corrections facility to the community. Projects must strategically coordinate community-wide efforts and resources to address reentry issues such as surveillance, supervision, graduated sanctions and incentives, linkages to community support systems (families, peers, schools, employers), transitional housing, and job training and placement activities. Applicants should describe clearly detailed reentry plans for youth offenders scheduled for release to their communities and their capacity to sustain their activities for 2 years after funding is no longer available. Strategies for effective case management services in aftercare programming include:

- Use of a reliable and validated risk assessment and classification instrument for establishing eligibility of the targeted population;
- Individual case planning that incorporates a family and community perspective;
- A mix of intensive surveillance and enhanced service delivery;
- Comprehensive, interagency transition planning that involves all critical stakeholders;
- A balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions;
- Work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.;
- Coordination of resources of juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, social service providers, and local Workforce Investment Boards; and
- ''Soft skills'' training, *i.e.,* job behavior and life skills training; self determination and social skills training; conflict resolution and anger management; parenting classes; exposure to post-secondary education opportunities; and community service learning projects.

Partnerships/Linkages: In addition to enhancing already existing services and programs, projects must center any newly developed and implemented activities upon the needs of youth involved, or at risk of becoming involved, with the juvenile justice system and gangs. In order to accomplish this, applicants should use partnerships both (1) to enhance the youth offender programs funded under this grant and (2) to provide complementary programs so as to link

services within the target community and provide a diversity of options for all youth offenders within the target area. These partnerships must agree to:

- Implement an education and employment program for youth offenders, gang members, and at-risk youth in the target area, including coordination with the private sector to develop a specified number of career-track jobs for target area youth offenders;
- Establish alternative sentencing and community service options for youth offenders, gang members, and at-risk youth in the target area; and
- Expand gang suppression activities in the target area.

Applicants should outline how they will involve residents, youth, and others of the community in planning and involvement in the effort. Proposals should describe the efforts within the project to utilize existing services and programs, particularly those offered through the WIA One-Stop delivery system and the juvenile justice system. Applicants should describe the efforts to be undertaken to coordinate services with private sector entities, including commitments for private sector jobs. Proposals should describe newly developed and implemented services and how these will enhance and augment presently existing strategies in the community.

Category I rating criteria: Each application under this category will be evaluated against the following rating criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem, the number of youth offenders residing in target community, and the barriers facing existing services to reach youth offenders and gang members (10 points);
- Plan to enhance and augment alternative sentencing, including educational and supportive services and case management; role of project case managers in these delivery strategies; plan for linking with schools for co-enrollment, etc. (20 points);
- Plan for enhancing gang prevention and suppression efforts, and use of a youth offender and gang prevention advisory board to achieve coordination; establishment of creative partnerships with local community grassroots organizations which provide services to the target population (20 points);
- Plan and capacity for conducting intensive comprehensive aftercare for preventing recidivism (20 points);
- Planned or committed level of investments (cost sharing and leveraging of funds) from educational agencies/schools and other public sector, WIA, and private sector partners; employment-related connections with the business community (25 points); and
- Plan to fulfill reporting requirements; and confirmation of cooperation with DOL evaluators (5 points).

Category II—Education and Training for Youth Offenders Initiative

These projects will provide a comprehensive school-to-work education and training curriculum for youth offenders in a juvenile correctional facility and aftercare/reentry services, with an emphasis on job placement and retention, upon a youth's return to his or her community. The comprehensive school-to-work education and training services developed under this initiative will serve as a model for other juvenile correctional facilities across the nation.

Eligible Applicants

State or local juvenile justice agencies or juvenile correctional agencies shall be the eligible applicant and should identify one juvenile correctional facility within their state where the project will operate. Applications must show the involvement/commitment of the following partners: the state/local Workforce Investment Board which is the administrative entity of WIA; the local Youth Councils; the state and local school-to-work partnership to which a majority of the youth offenders will return; and representatives of major employer networks connected to the school-to-work effort.

Funding Availability

The Department expects to award one (1) grant of approximately $2 million under this category.

Performance Period

The period of performance for the grant awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to providing program services to eligible youth as defined in this notice. The final 6 months will be solely for organizing participant case files, providing the files to the demonstration's evaluator within two months after grant-funded services terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

Grant funds shall be used to enhance an existing system currently serving youth offenders. Programs must be designed to (1) raise the quality of work and learning for incarcerated juvenile offenders through the school-to-work component and (2) strengthen aftercare/reentry services for youth transitioning to their communities following confinement by building connections to local workforce development and school-to-work systems through the aftercare component. Involvement with the local Youth Council of the local WIB is critical to ensuring that this occurs. This overall strategy needs to be responsive to the particular problems of youth offenders and gang members in juvenile correctional facilities, and must include the following:

School-to-work: This component includes the development and/or strengthening of a comprehensive school-to-work curriculum within the juvenile correctional facility, with ties to vocational development and youth employment services funded under WIA. This school-to-work system must contain the following core elements (for additional information, see Attachment I from Evaluation of the School-to-Work-Out-of-School Youth Demonstration and Job Corps Model Centers: Final Report for the Job Corps Model Centers, Research and Evaluation Report Series 00–E, U.S. Department of Labor/Employment and Training Administration, 2000):

- *School-based Learning:* school-wide classroom instruction based on high academic and business-defined occupational skill standards;
- *Work-based Learning:* career exploration, work experience, structured training, and mentoring at job sites; and
- *Connecting Activities:* course integrating classroom and on-the-job instruction, matching students with participating employers, training of mentors, and the building of bridges between school and work.

The jointly developed curriculum should include input from corrections education, the state school-to-work partnership, local school districts and employer networks connected to the school-to-work effort. Projects are also encouraged to work with Job Corps centers in the development of a school-to-work based education curriculum. This curriculum should closely parallel the curriculum developed for the communities to which youth offenders will be returning and structured in such a way as to enable the youth to transition from the institution to the

community and continue in a sequential manner with their educational and vocational development.

Aftercare: Grant funds should link with existing resources to provide intensive aftercare services for youth offenders transitioning from secure confinement in a juvenile corrections facility to the community. Aftercare services must strategically coordinate community-wide efforts and resources to address reentry issues such as surveillance, supervision, graduated sanctions and incentives, linkages to community support systems (families, peers, schools, employers), transitional housing, and job training and placement activities. Applicants should describe clearly detailed reentry plans for youth offenders scheduled for release into their communities. Strategies for effective case management services in aftercare programming include:

- Use of a reliable and validated risk assessment and classification instrument for establishing eligibility of the targeted population;
- Comprehensive, interagency transition planning that involves all critical stakeholders;
- Individual case planning that incorporates a family and community perspective;
- A mix of intensive surveillance and enhanced service delivery;
- A balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions;
- Work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.;
- Coordination of resources of local Workforce Investment Boards, juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, health and social service providers, and community organizations; and
- ''Soft skills'' training, *i.e.,* job behavior and life skills training; self-determination and social skills training; conflict resolution and anger management; parenting classes; exposure to post-secondary education opportunities; and community service learning projects.

Partnerships/linkages: Applicants should use partnerships to (1) enhance the school-to-work component funded under this grant and (2) provide complementary programs which enable communities to be better able to provide aftercare services for returning youth offenders. The state recipients of a Juvenile Accountability Incentive Block Grant (JAIBG) are strongly encouraged to contribute, in the form of a cash match, 10% of the total program cost, except when the JAIBG funds are used for construction or renovation of permanent correction facilities. Partners under this category should agree to:

- Augment a school-to-work program in one targeted juvenile correctional facility;
- Assist the applicant with the seamless delivery of case management and aftercare services and supervision to youth returning to the community;
- Develop linkages to local school-to-work efforts with assistance from the State school-to-work partnership; and
- Coordinate with the private sector to develop a specified number of career-track jobs for target area youth offenders.

Proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages shall include both existing and proposed strategies. Grant funds may be used for staff and teacher training in order to facilitate an effective system of connected classroom-based and work-based activities.

Additional funding sources may include Juvenile Justice and Delinquency Prevention Act formula grant monies and JAIBG funds. The Federal Bonding Program and WOTC should be considered as important tools to assist with youth offender employment placements. Information about these programs is available at ETA's website, *http://www.doleta.gov.*

Category II Rating Criteria: Each application for funding under this category will be reviewed and rated against the following criteria:

- The stated need in the targeted juvenile correctional facility and state or local juvenile corrections system, as demonstrated by the effectiveness of the current correctional education curriculum and the number of youth who will benefit (20 points);
- Implementation plan for conducting the project, including detailed project scope of the aftercare services to be provided in the community (30 points);
- Planned or committed level of investments of schools, other public sector partners including school-to-work partnerships, and private sector partners with commitments for jobs; employment-related connections to the business community (25 points);
- Planned or committed linkages and coordination of services within the local workforce investment systems (15 points);
- Plan to fulfill reporting requirements (5 points); and
- Confirmation of cooperation with DOL and DOJ evaluators (5 points).

Category III—Community-Wide Capacity Building Projects

This program component will provide smaller grants for impoverished communities within small to medium-sized cities with high crime rates. Grants awarded under this category will create models for use by States and local boards to increase assistance to high-risk youth. These models will build service capacity into the One-Stop delivery system to expand the range and quality of currently existing services designed to prepare high-risk youth for high-quality employment with career development ladders and livable wages. These projects will work with local Youth Councils and service providers to develop linkages that will strengthen the coordination of prevention and recovery services for youth offenders. Linkages to existing community programs such as the WIA year-round youth training and summer jobs for low-income youth, school to work programs, other federal programs, and sports and recreation programs could contribute to juvenile crime prevention.

These grants are to strengthen or build infrastructures that address the needs of this youth population. Providing services to youth is only a means of measuring the effectiveness of the infrastructure. The goal of this category is to develop strategies and integrated service models which will then be implemented. Because of the challenges associated with building strong partnerships leading to comprehensive services, special technical assistance will be made available to successful applicants of this category to assist with their development and implementation processes.

Eligible Applicants

Workforce Investment Boards (WIBs) and private entities located within high-crime communities with a population of at least 100,000 and not greater than 400,000 and a significant youth gang and youth crime problem are eligible to apply. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified private organizations.

Private entities include non-profit organizations but do not include for-profit organizations and individuals. Applicants should provide documentation from their local law enforcement agency showing support

for the existence or emerging gang problem and other serious youth crime problems. WIBs and private entities applying under this category must demonstrate a strong commitment to developing capacity building models which States and local boards will use to serve high-risk individuals under the WIA system.

Entities other than a WIB or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the WIB(s) and its Youth Council for the area in which the project is to operate. The term ''in conjunction with'' shall mean that the application must include a signed certification by both the applicant and the appropriate WIB(s) indicating that:

1. The applicant has consulted with the appropriate WIB (and its Youth Council) during the development of the application; and

2. The activities proposed in the application are consistent with, and will be coordinated with, the One-Stop delivery system efforts of the WIB(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the WIB and its Youth Council and indicating that the WIB was provided, during the proposal solicitation period, a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. ''Sufficient opportunity for WIB review and comment'' shall mean at least 30 calendar days. Failure to provide information describing the efforts which were undertaken to consult with WIB(s) will disqualify applicants.

The certification, or evidence of efforts to consult, must be with each WIB in the service area in which the proposed project is to operate. These certifications must be included in the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, evidence of efforts to consult with the WIB must be demonstrated by written documentation, such as registered mail receipt, that attempts were made to share project applications with the WIB in a timely manner. WIB applicants and applicants that provide a signed certification by the applicant and the appropriate WIB(s) will be given preference for award.

Funding Availability

The Department expects to award five (5) grants approximately $350,000 each to Community-Wide Capacity Building Projects under this competition.

Performance Period

The period of performance for all grants awarded under this competition, within this category, will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to strengthening or building infrastructures that address the needs of this youth population, by developing strategies and integrated service models. The final six months will be solely for organizing partnership records for developed strategies and integrated service models, providing the final records to the demonstration's evaluator within two months after grant-funded activities terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

Program Components

In order to develop capacity building models, grant funds shall be used to build upon an existing system currently serving in-school and out-of-school youth, youth offenders, or youth in gangs or prone to joining gangs. Efforts should be made to integrate youth into a full range of educational and alternative programs when appropriate. In order to be responsive to the particular problems of youth offenders, gang members, and those at-risk in high-poverty, high-crime areas, the overall strategy for the capacity building projects should encompass the following:

Career preparation services: The capacity building projects should provide for employment preparation, job placement, and linkages with the workforce development system. Models should focus on programs that train individuals for employment in fields in which technology skills are critical aspects of the jobs emerging in the regional labor market. Training models may also include basic skills and pre-apprenticeship training (as appropriate). Applicants must address the various strategies that their models will employ to actively recruit the target population, and should discuss the projected length of time necessary to determine the efficacy of their models' technical assistance.

Case management/support services: Proposals must demonstrate how the applicants plan to enhance the capacity of the WIA system to assist high-risk youth who are transitioning from dependency to independent living by including innovative service strategies which address their barriers to employment and the flexibility of services available. The framework for the proposed capacity building model should provide for (as applicable): Individual needs assessment; individual service strategies; long-term follow-up services; and linkages with human services, education, and transportation services. Other strategies may include ''soft skills'' training like job behavior and life skills training, social skills and self-determination, conflict resolution, parenting classes, exposure to post-secondary education opportunities, and service learning projects. Applicants should detail their capacity to sustain these activities for 2 years after funding under this solicitation is no longer available.

Partnerships/Linkages: Applicants should use partnerships both (1) to enhance the currently existing youth offenders programs and WIA services and (2) to provide complementary programs so as to make the target community an available service area for all youth offenders. Applicants should also agree to a good faith effort to continue projects started under this grant beyond the 24-month grant period. Partners should also agree to:

- Build upon existing employment and training, recreation, conflict resolution, and other youth crime and gang prevention programs to include youth offenders and gang members;
- Establish alternative sentencing and community service options for target area youth and gang members;
- Provide work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.
- Establish or continue gang suppression activities within the target area; and
- Build connections to local workforce investment systems, such as linkages with WIBs while demonstrating approaches that ensure that high-risk youth are provided with quality workforce development services.

Youth Offender and Gang Prevention Advisory Board: In order to institute a holistic approach to assisting the target population, employment, education, criminal justice, and community-based youth programs should be incorporated into the projects. In developing this interrelated system, grant funds shall be used to create a youth offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership. The advisory board should be comprised of public and private sector representation, parents, youth members, and graduates of other youth

offender programs and will link with the local Youth Council to provide seamless delivery of services.

In addition, proposals should specify the linkages between the Youth Offender project and the local WIA Youth Council through the One-Stop delivery system to ensure coordination of workforce development services. These linkages should include both existing and proposed strategies.

Category III rating criteria: Applications received for funding under this category shall be rated against the following criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem and the number of youth offenders residing in the target community, and the inability for existing services to include youth offenders and gang members (10 points);
- Plan to enhance and augment presently existing youth offender programs and youth crime prevention strategies (20 points);
- Plan and capacity for developing and implementing models, including plan for preventing recidivism (30 points);
- Planned or committed level of investments (cost sharing and leveraging of funds) from educational agencies/schools and other public sector, WIA, and private sector partners, including commitments for private sector jobs (15 points);
- Planned or committed linkages and coordination of services within the local workforce investment systems; use of a youth offender and gang prevention advisory board to achieve coordination; establishment of creative partnerships with local community grassroots organizations which provide services to the target population (15 points);
- Plan to fulfill reporting requirements (5 points); and
- Confirmation of cooperation with DOL evaluators (5 points).

Signed at Washington, D.C. this date, December 11, 2000.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

Appendix A: Application Face Sheet
Appendix B: SF–424—Application for Federal Assistance
Appendix C: Budget Information Form

BILLING CODE 4510–30–P

APPENDIX A

COVERSHEET

Application for funding under SGA/DFA -110 "Community Audits"

Name of Applicant:_____

_____

Contact Person:_____

Phone Number:_____

Category: (MUST CHECK ONE)

____ Category I - Model Community Projects

____ Category II - Education & Training for Youth Offenders Initiatives

____ Category III - Community-Wide Capacity Building Projects

APPENDIX B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$	$	$
2. Fringe Benefits (Rate%)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate%)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$	$	$

SECTION B - Cost Sharing/Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution	$		
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate%)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–32018 Filed 12–15–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 12, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Preliminary Estimates of Average Employer Contribution Rates.

OMB Number: 1205–0228.

Form Number: ETA 205.

Frequency: Annually.

Affected Public: State, Local, or Tribal government.

Number of Respondents: 53.

Estimated Time per Respondent: 16 minutes.

Total Burden Hours: 14.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The average tax rates collected from States are used to compute an average tax rate for the U.S., and along with the current tax rate schedules, are used to certify that States are complying with the law.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–32163 Filed 12–15–00; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting; Change in Meeting Time and Date

PREVIOUSLY ANNOUNCED TIME AND DATE: 2 p.m., Tuesday, December 12, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

CHANGES IN THE MEETING: The time and date of the Commission meeting to consider and act upon Disciplinary Proceeding, Docket No. D 2000–1, has been changed to commence following upon the conclusion of the Commission meeting starting at 10 a.m., December 13, 2000, to consider the Commission's general procedures for handling requests to vacate defaults. No earlier announcement of these changes was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–32258 Filed 12–14–00; 12:22 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (00–143)

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, January 31, 2001, 12:00 Noon–1:00 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Two mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: December 13, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–32108 Filed 12–15–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL COUNCIL ON DISABILITY

Establishment of Advisory Committee

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice announces the establishment of NCD's Cultural Diversity Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Committee Management Officer, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), mquigley@ncd.gov (e-mail).

Agency Mission

NCD is an independent federal agency making recommendations to the President and Congress on disability policy. It is composed of 15 members

appointed by the President of the United States and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Cultural Diversity Advisory Committee

The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

This committee is necessary because people with disabilities from culturally diverse backgrounds face dual discrimination and are disproportionately represented among those with disabilities.

This committee will have a balanced membership representing a variety of disabling conditions and culturally diverse populations from across the United States.

Signed in Washington, DC, on December 12, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–32096 Filed 12–15–00; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions,'' (NUREG–1600) (Enforcement Policy or Policy) to establish separate base civil penalty amounts for loss, abandonment, or improper transfer or disposal of sealed sources and devices containing NRC-licensed material.

DATES: This action is effective February 16, 2001. Comments on this revision should be submitted by January 17, 2001, and will be considered by the NRC before the next revision of the Enforcement Policy.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room at 11555 Rockville Pike, Rockville, MD 20852.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE/.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Telephone (301) 415–2741, e-mail rwb1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a companion final rule published in today's **Federal Register**, the NRC is amending its regulations in 10 CFR Parts 30, 31, and 32, governing certain industrial devices containing byproduct material that are licensed pursuant to the general license provisions of 10 CFR 31.5. A proposed rule was published in the **Federal Register** on July 26, 1999 (64 FR 40295), which indicated that the NRC planned to increase the civil penalty amounts specified in its Enforcement Policy for violations involving sources or devices that are lost or improperly disposed of. The stated intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In the notice of proposed rulemaking, the Commission stated that it was considering three levels of base civil penalty for loss or improper disposal, with the higher tiers for sources that are relatively costly to dispose of. The three levels of base civil penalty were to be $5,500, $15,000, and $45,000. The three tiers were to be based approximately on three times the average cost of proper transfer or disposal of the source or device. The intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In this Enforcement Policy, the change to the base civil penalty structure considers both the cost of proper disposal and the relative risk to the public from sources that are lost, abandoned, or improperly transferred or disposed of. The Commission believes that a base civil penalty amount roughly equivalent to three times the cost of proper disposal will provide for sufficient deterrence and an economic incentive for licensees to expend the necessary resources to ensure compliance. If the civil penalty were less than the cost of proper disposal, the licensee would receive an economic benefit from an improper disposal, whether intentional or not. A civil penalty roughly equivalent to the cost of disposal may not provide a sufficient deterrent because the violation could go undetected, which would still allow an economic benefit. Additionally, the civil penalty amount should be sufficient to assure that the cost of proper disposal of sealed sources and devices does not cause licensees to purposefully violate applicable disposal requirements.

Sources and devices containing small amounts of radioactive material, such as gas chromatographs, and devices containing hydrogen-3 (tritum) can be disposed of for less than one third of the lowest base civil penalty amount under the current Enforcement Policy, which is not $6,000. The proposed rule notice of July 26, 1999, suggested that the lowest tier amount would be $5,500. However, in another recent revision to the Enforcement Policy (October 4, 2000; 65 FR 59274), which adjusted civil monetary penalties for inflation in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, the base civil penalty that would otherwise have been applicable was raised from $5,500 to $6,000. It would be illogical to establish a lower base civil penalty amount specifically for loss, abandonment, or improper transfer or disposal. Therefore, this action establishes $6,000 as the lowest base civil penalty amount for these violations.

The companion final rule to this Enforcement Policy incorporates criteria for registration of devices containing material of the types and quantities listed in 10 CFR 31.5(c)(13)(i). These are devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, and 37 MBq (1mCi) of americium-241 or any other transuranic (i.e., element with atomic number grater than uranium (92)). Annual registration is being required for these devices because they are considered to present a higher risk for potential exposure to

the public and for loss of property (due to contamination) if the device is lost, abandoned, or improperly transferred or disposed of. Based on the higher risk, violations involving loss, abandonment, or improper transfer or disposal of sources and devices in this category have been assigned a base civil penalty amount of $15,000.

With the exception of sources and devices containing hydrogen-3 (tritum), the highest activity sources and devices (i.e., those with activities greater than 3.7×10^4 MBq (1 Curie)), have an approximate average cost of disposal of $15,000. The base civil penalty amount for loss or improper disposal of these sources and devices has been set at $45,000, which is three times the average cost of disposal.

The Commission believes that normally a civil penalty at least in the amount of the base civil penalty is appropriate in the case of loss, abandonment, or improper transfer or disposal of a sealed source or device. This is to ensure that the associated enforcement action properly reflects the significance of such violations. This change has been implemented in Section VII.A.1(g) of the Enforcement Policy. However, NRC may mitigate or escalate a civil penalty amount, as provided in the Enforcement Policy, based on the merits of a specific case. In doing so, NRC may consider information concerning the actual expected cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal.

Scope

The base civil penalties established in this change to the Enforcement Policy apply to violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or the type of licensee.

Paperwork Reduction Act

The NRC Enforcement Policy does not contain a new or amended information collection requirement and therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

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, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

VI. Enforcement Actions

* * * * *

C. Civil Penalty

* * * * *

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device are treated separately, regardless of the use or the type of licensee. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs, and for loss, abandonment or improper transfer or disposal of a sealed source or device. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider necessary increases or decreases on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

TABLE 1A.—BASE CIVIL PENALTIES

* * * * *

f. Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee: [3]	
1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	$45,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	$15,000
3. Sources and devices not otherwise described above	$6,000

[3] These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

* * * * *

VII. Exercise of Discretion

* * * * *

A. Escalation of Enforcement Sanctions

* * * * *

1. Civil Penalties

* * * * *

(g) Cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Notwithstanding the outcome of the normal civil penalty assessment process, these cases normally should result in a civil penalty of at least the base amount; or

* * * * *

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31874 Filed 12–15–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. R2000–1; Order No. 1301]

Notice and Order of Request for Reconsideration of Commissions Docket No. R2000–1 Opinion and Recommendation Decision

AGENCY: Postal Rate Commission.

ACTION: Notice and order on request for reconsideration of Commission's docket no. R2000–1 opinion and recommendation decision.

SUMMARY: This document informs the public that the Governors of the Postal Service have requested reconsideration of the Commission's opinion and recommended decision in docket no. R2000–1. It also establishes deadlines for comments from the Postal Service and other rate case participants on stated issues.

DATES: Initial Postal Service comments are due January 3, 2001; participants' comments are due January 24, 2001; and Postal Service reply comments are due January 31, 2000. Alternative deadlines are identified in the Supplementary Information section.

ADDRESSES: Send comments to the attention of Margaret P. Crenshaw, Secretary, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

A. Authority to Reconsider the Decision

39 U.S.C. 3625(d).

B. Background

On December 5, 2000 the Governors of the United States Postal Service issued two decisions on the Commission's November 13, 2000 opinion and recommended decision in docket no. R2000–1. The Postal Service provided separate notices with these two decisions indicating that they had been mailed to the service list in docket no. R2000–1.

The decision of the Governors of the United States Postal Service on the recommended decision of the Postal Rate Commission on postal rate and fee changes, docket no. R2000–1 (decision of the Governors), states at 1, ''we allow the recommended decision to take effect, under protest, and return it to the Commission for reconsideration and a further recommended decision as expeditiously as possible.'' By this order, the Commission initiates action to reconsider the Postal Service request in this docket, consistent with 39 U.S.C. 3624.[1]

Participants in docket no. R2000–1 will be accorded a reasonable opportunity to provide their views on each of the issues on which reconsideration is sought. These issues include the rates that would be recommended should the Commission, on reconsideration, determine that it should adjust its findings on the issues identified by the Governors.

The decision of the Governors notes at 2, that the Commission directed the Postal Service to provide updated cost information during the course of the hearings in this proceeding, and that the information provided by the Service ''suggested that the projected test year revenue requirement had increased to over $69.8 billion.'' The Governors' subsequent finding ''that the revenue requirement is $69.832 billion[,]'' *id.* at 12, evidently relies on the updated costs used in the Commission's recommended decision of November 13, as does their determination of a $1.695 billion contingency amount, versus the $1.680 billion originally requested. The rates recommended by the Commission produce $68.819 billion, a difference of more than one billion dollars.

The Governors have advised that the test year revenue requirement for the Postal Service should be increased by including the $200 million field reserve, adding $97 million in supervisor costs, and increasing the provision for contingencies by $687 million.[2] The Governors also protest that rates should be increased to recover the purported cost consequences of increased volumes of heavier First-Class Mail, to correct a perceived error in the computation of bound printed matter rates, to offset revenues lost if nonprofit standard mail rates are reduced to conform better with amended 39 U.S.C. 2626 and, possibly, to allow for a reduction in certain parcel post surcharges.

The Commission will review the evidentiary record and the applicable legal standards applicable to each of these seven issues. The first step in this process will be to call upon the Postal Service to provide detailed statements on each of these issues, setting out evidentiary and legal support for the outcomes deemed proper by the Governors. Other participants, having been fully informed of the rationales underlying the decision of the governors, will then have an opportunity to provide their views. Finally, the Postal Service will be given a last opportunity to respond to arguments presented by other participants.

Throughout the proceeding to this point the Postal Service has indicated that it sought ''only the revenue goals embodied in its Request.'' Postal Service Brief at 1–13. Consistent with this position, it urged the Commission to recommend the rate and fee proposals embodied in the Postal Service request of January 12, 2000.[3] *Id.* at 1–14. In its initial submission in response to this order, the Postal Service is to present its views on the appropriate portions of total revenues that each subclass and service should contribute toward collecting sufficient test year revenues in light of the Governors' revenue requirement finding. The Service may also suggest specific rates that would achieve these subclass and service specific revenue goals.

Participants may also comment on how to recognize other matters referred to in the decision of the Governors. For example, the Governors apparently view their rejection of the proposed Priority Mail flat rate envelop classification change and the final FY 2000 deficit as altering the perceived test year revenue deficiency.

The Governors have requested that the reconsideration process be conducted as expeditiously as possible. Nonetheless, this process will be most effective if all participants have adequate time to prepare throughful, carefully reasoned presentations. Therefore, the Commission will allow at least three weeks for the submission of views from each participant. Recognizing that the year-end holiday season is rapidly approaching, the deadline for the submission of initial Postal Service comments will be extended further, until January 3, 2001. Other participants' comments are to be submitted by January 24, 2001, and the final Postal Service response will be due on January 31, 2001.

It is of course quite possible that the Postal Service already prepared much of the analysis needed for the initial Postal Service comments during the process of assisting the Governors. If the Postal Service provides its initial comments on or before December 20, 2000, then the date for participant comments shall be January 12, 2001, and the date for the final Postal Service response will be January 19, 2001.

It is ordered:

The Postal Service and other participants shall provide their views on the Decision of the Governors requesting reconsideration in accordance with the schedule set out in the body of this order.

Dated: December 12, 2000.

Margaret P. Chenshaw,

Secretary.

[FR Doc. 00–32099 Filed 12–15–00; 8:45 am]

BILLING CODE 7710–FW–M

[1] A separate decision of the Governors of the United States Postal Service on the recommended decisions of the Postal Rate Commission on select mail classification matters, docket no. R2000–1 did not request reconsideration of any issue, and thus is not before the Commission except as it impacts on test year after rates revenues.

[2] The $687 million is derived by subtracting the $1.012 [billion] figure allowed in the Commission opinion and recommended decision from the $1.695 [billion] figure shown in the decision of the Governors at 12.

[3] The Postal Service did not support lower rates for Periodicals and rates for preferred mail that conform with 39 U.S.C. 3626.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43704; File No. SR–ISE–00–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC, Relating to Fee Changes

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2000, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On December 7, 2000, ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to its fees regarding: (i) Customer transactions; (ii) multiple ''Click'' order entry terminals; (iii) ''enhanced cabinets''; and (iv) continuing registration and transfer fees for associated persons. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to effect the following changes to the ISE's fees:

Customer Transaction Fees: The ISE currently waives customer transaction fees. This waiver will expire on November 26, 2000. The Exchange proposes extending this waiver for an additional six months.

Click Terminals: The Exchange imposes fees on ''Click'' order entry devices (used by Electronic Access Members) of: (i) $500 per terminal for up to five terminals and $250 for additional terminals; and (ii) $250 per application program interface (''API'') associated with a terminal for up to five APIs and $100 for additional APIs. To encourage members to send order flow to the Exchange, the ISE proposes to eliminate Click and API fees for a member's third and subsequent terminal if the member has an average daily volume (''ADV'') on the Exchange of 500 customer or firm proprietary contracts per ''free'' terminal.[4]

Enhanced Cabinets: Certain market makers have requested that the Exchange provide them with an ''enhanced cabinet'' on their premises, containing three, rather than the standard two, gateways to the Exchange. The Exchange proposes an increase of $250 to the standard fee to reflect the incremental cost of the third gateway.

Associated Persons: The ISE is the only options exchange that does not at least partially offset its regulatory costs by levying an annual ''central registration depository'' fee for members' associated persons and for processing the transfer of such persons. The proposed rule change would impose the following fees: $30 annual fee and $25 transfer fee.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] because the proposed rule change establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the proposed rule change to delete a fee related to inactive memberships, as well as delete a minimum monthly bin fee. These fees are addressed in a separate filing, SR–ISE–00–26. *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2000 (''Amendment No. 1'').

[4] Assume a member has 10 Click terminals. With ADV of 4,000 contracts per month (500 contracts per terminal on the eight potentially ''free'' terminals), it would pay Click and API fees for the first two terminals, with the fees for the other eight terminals waived. With ADV of 3,500 contracts, the members would qualify for an exemption on all but one of the eight terminals.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

submissions should refer to the File No. SR–ISE–00–12 and should be submitted by January 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32116 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43701; File No. SR–NASD–00–64]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Allow In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

December 11, 2000.

I. Introduction

On October 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Notice of the proposed rule change appeared in the **Federal Register** on November 6, 2000.[3] The Commission received one comment on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

NASD Regulation proposes to amend NASD Rule 1120(a) to permit the in-firm delivery of the Regulatory Element of the Continuing Education Requirements. Currently, this computer-based training program can be administered to registered persons only at the location of an outside vender.

The Regulatory Element is a 3½ hour computer-based training program. NASD Rule 1120(a) requires that each registered person, who is not exempt from the Rule, complete the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time period is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The Securities Industry/Regulatory Council on Continuing Education (''Council'') is responsible for the oversight of the continuing education program for the securities industry. The Council's duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council is comprised of representatives from a broad cross section of broker/dealers, and six self-regulatory organizations, including the NASD. The Council, working with representatives from the North American Securities Administrators Association has developed a model under which broker/dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker/dealer meet certain conditions for in-firm delivery relating to computer hardware and to the security of the training delivery environment. The proposed amendments to Rule 1120(a) encapsulate the delivery requirements as specified by the Council. Firms of any size may take advantage of the in-firm delivery procedures.

III. Summary of Comments

The ICI expressed its support for the proposal, stating that the proposed changes may facilitate the ability of ICI's members to comply with the Regulatory Element requirements.[5] Additionally, the ICI believes the proposed amendment will reduce the time and any related travel costs that registered representatives spend to take the Regulatory Element.[6] Finally, the ICI believes that the conditions proposed in the amendment regarding in-firm delivery adequately balance the interest of NASD Regulation in protecting the integrity of the Regulatory Element with the interest of member firms in not being unduly burdened when exercising this option.[7] For these reasons, the ICI expressed its support of the proposed amendments to NASD Rule 1120.

IV. Discussion

The Commission has reviewed carefully the proposed rule change, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder.[8] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act.

Section 15A(b)(6)[10] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest. The Commission believes that the proposal should facilitate compliance with the Regulatory Element of the Continuing Education Requirements by making the program easily accessible to registered persons via in-firm delivery, as opposed to requiring that it be administered at the location of an outside vendor, and by allowing firms of any size to partake of the in-firm delivery procedures. The Commission is satisfied that the proposal provides reasonable safeguards to uphold the integrity of the program, as well as delineating proper conditions for in-firm delivery relating to computer hardware, consistent with the requirements specified by the Council. Finally, the Commission believes the proposal establishes reasonable requirements with regard to the security of the training delivery environment, as specified by the Council.

V. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),[11] in particular.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43492 (October 27, 2000), 65 FR 66576.

[4] *See* November 22, 2000 letter from Tamara K. Reed, Associate Counsel, Investment Company Institute (''ICI'') to Jonathan G. Katz, Secretary, SEC (''ICI Letter'').

[5] *See* ICI Letter at p. 1.

[6] *Id.*

[7] *See* ICI Letter at p. 2.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–00–64), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32092 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43699; File No. SR–NSCC–00–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Certain Securities Undergoing Reorganization

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 10, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's procedures to permit the processing of securities subject to certain voluntary corporate action in NSCC's continuous net settlement (''CNS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify NSCC's Rules and Procedures to permit securities that are subject to certain voluntary corporate action which would normally cause them to be exited from NSCC's CNS system to continue to be processed in CNS.[3] From time to time a security may become subject to an offer that has a feature which would normally require it to be exited from CNS. Consistent with the industry's goal to increase automated transaction processing, NSCC has been working to enhance the CNS system to enable it to process securities with reorganization events that have a wider and more varied range of features. The proposed rule change would provide that when NSCC determines that it has the operational capability to continue to process such an issue, the issue would continue to be CNS eligible, and NSCC would establish procedures necessary for NSCC to accommodate the issue in CNS. NSCC would issue an Important Notice to its members detailing how the security would be processed.

NSCC's Rules and Procedures permit NSCC to continue to process certain securities undergoing corporate reorganizations and specify how NSCC shall handle those issues. For example, currently NSCC's Procedure VII provides for the processing in CNS of securities subject to tender offers with protect periods of three or more days. Securities subject to tender offers with protect periods of less than three days cannot currently be processed in CNS, and NSCC would normally exit such securities from the CNS system. In that case, NSCC would issue receive/deliver instructions to participants with long or short positions in the subject security. The proposed rule change would allow securities subject to tender offers with no protect periods or protect periods of less than three days to be processed in CNS.

Another example, would be issues subject to multiple tender offers. Currently, NSCC's Rules and Procedures provide for the establishment of up to two CNS reorganization subaccounts for issues subject to two tender offers. Under NSCC's proposal, it could, provided it has the operation capability to do so, establish multiple CNS subaccounts for issues subject to multiple tender offers.

In addition, in order to eliminate the possibility of error which arises from manual processing, NSCC has determined not to continue providing certain features which were processed on a manual basis. For example, the rule would no longer permit new input on the last day of the protect period.

NSCC intends to implement these changes, subject to SEC approval, on or about February 9, 2001.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, NSCC believes that because the proposed rule change would allow additional corporate actions to be processed in a CNS environment, it would facilitate the prompt and accurate clearance and settlement of such securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. However, NSCC has worked closely with the Securities Industry Association's Corporate Action division in developing the proposed CNS modifications, and they concur with the proposed changes. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] As a part of its filing, NSCC is proposing to modify its Rules and Procedures to refer to reorganization events as voluntary and mandatory instead of as voluntary and involuntary.

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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–10 and should be submitted by January 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32114 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43689; File No. SR–NYSE–98–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Creation of a Floor Audit Trail

December 7, 2000.

I. Introduction

On August 4, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the NYSE seeks to adopt new provisions in NYSE Rule 123, to provide for the capturing of details of an order systemically on the Floor of the Exchange. The proposed provisions require that the details of all orders be recorded in an electronic system prior to being represented or executed on the Floor. On December 21, 1998, and June 8, 1999, respectively, the Exchange filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 12, 1999.[4] The Commission received no comments on the proposed rule change and this order approves it.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The Exchange has proposed a series of initiatives to strengthen the regulation of activities of members on the Floor. In this filing, the Exchange proposes to adopt new provisions in NYSE Rule 123 for recording the details of an order, as well as any modification or cancellation of such order, in an electronic system prior to representing or executing an order on the Floor.

The proposed amendment to NYSE Rule 123 defines an order as any written, oral or electronic instruction to effect a transaction. Paragraph (e) of the proposed rule requires that, prior to being represented, an order, including any changes in its terms and any cancellations, must be entered into an electronic system that records the order details and records the time the order details were entered into the system and the time of any modification or cancellation. Nevertheless, the proposed rule excludes transactions initiated on the Floor and executed by a registered competitive market maker, a competitive trader or a specialist for their own account, as such trades may be initiated on the Floor and are already reported to the Exchange. In addition, the proposed rule provides that members may use either a proprietary or an Exchange system to comply with the rule, and if a proprietary system is used, order details must be sent to a designated NYSE database.

The proposal requires that, other than as noted above, before representing or executing an order on the Floor, a member, whether acting as agent for another member on the Floor or otherwise, is obligated to make sure that the details of such order have been entered in an electronic system in accordance with the requirements of the rule. The Exchange represents that the details of the order may be entered into the system by an individual or organization other than the member who is representing or executing the order, but if this were to occur, the member with the order could not represent or execute the order until the details of the order were recorded in an electronic system.

According to the NYSE, this proposed rule change does not replace existing requirements for recording orders contained in Exchange or Commission rules. For example, NYSE Rule 123, under the heading ''Receipt of Orders,'' requires each member to preserve for three years a record of every order received by that member on the Floor from off the Floor, including the time when such order was received. NYSE Rule 410 requires each member or member organization to preserve for three years a record of every order transmitted to the Floor or received and carried to the Floor by such member or member organization, including the name and amount of security, the terms of the order, the time it was transmitted or received, and the time an execution report was received.

The proposal requires that members enter the following order details: symbol; clearing member organization; order identifier (as assigned by the member or member organization recording the order details)[5] that uniquely identifies the order; identification of member or member organization recording order details; quantity; side of market (*e.g.,* buy, sell long, sell short, sell short exempt); designation as market, limit, stop or stop limit; limit price, stop price and stop limit price (if applicable); time in force (*e.g.,* day, GTC, GTX);[6] designation as held or not held,[7]special conditions (*e.g.,* Rule 10b–18, ''G'' order and any request by a customer that an order not be displayed); and, a system-generated timestamp. The proposed rule would also require the systematic entry of such other details as the Exchange may require from time to time.

Along with this rule change, the Exchange proposes to design a database

[3] *See* letters from James E. Buck, Senior Vice President, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 18, 1998; and from Daniel P. Odell, Assistant Secretary, NYSE, to Richard Strasser, Division, Commission, dated June 7, 1999.

[4] *See* Securities Exchange Act Release No. 41706 (August 4, 1999), 64 FR 44069.

[5] According to the Exchange, its Broker Booth Support System (''BBSS'') automatically assigns a unique order identifier to the order, but a member or member organization can choose instead to override this feature and assign its own unique identifier.

[6] The Exchange represents that an order designated as good until a specific time will be recorded in a separate memo field (rather than in the time in force field) as a special condition or special instruction.

[7] The Exchange represents that this designation will also be recorded in a separate memo field (or fields) that will allow other special instructions and special conditions to be entered in a free format.

system that it believes will enable compliance with this rule and enhance the ability of its BBSS to support various trading floor business models, while minimizing the impact on the timely execution of orders. According to the NYSE, these systems are being developed in consultation with various member committees as well as the individuals on the Upstairs Traders Advisory Committee and the Exchange Traders Advisory Committee. In addition, the Exchange represents that it has interviewed individual brokers, member firm technology departments, and service bureaus.

In addition to recording the data elements required by NYSE Rule 123, the Exchange represents that its database system will be able to record optional order data elements, including special instructions (*e.g.,* go along, percent of volume), account type identifier (this is optional on order entry but mandatory on submission to trade comparison for audit trail), account number and any other information the firm chooses to include in the record, provided it is consistent with the format(s) accepted by the Exchange.

The Exchange also plans to modify the existing BBSS to enable compliance at trading floor booths for firms that choose an NYSE (versus a proprietary) system to comply with the proposed rule. According to the Exchange, the BBSS enables firms to enter orders that are phoned to the Floor to receive orders delivered to the booth systemically via a proprietary system/NYSE system interface; and to enter orders from off-floor using an NYSE system. The Exchange represents that the planned enhancements to BBSS are designed to support entry of all order types and all required information as well as to speed data entry by providing quick entry templates and other data entry enhancements. The Exchange believes that the BBSS upgrade would also improve order and information management features resulting in operational efficiencies for the firms.

According to the Exchange, BBSS currently is capable of accepting orders with prices per share as low as $.01 and as high as $99,999.[8] However, in the event that BBSS cannot accommodate an order at the time NYSE Rule 123 becomes effective, the Exchange represents that brokers relying on BBSS to comply with the Rule would be exempt for orders that could not be entered through BBSS until such time as BBSS is compatible with the entry of such orders. According to the Supplementary Material of the proposed rule, orders that by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with the proposed rule shall be exempt from the order entry requirements of the proposed rule. However, if a proprietary system is used, the proposed rule requires that the system must be capable of transmitting details of all orders to the Exchange database.

With regards to system specifications, the NYSE represents that its systems development plan includes building a new database to collect and consolidate records of orders in NYSE systems and orders that are sent to the Exchange Floor for execution through a member firm's proprietary system. Further, the NYSE represents that its systems will be designed to provide for members firms' proprietary systems interface to the NYSE database in Common Message Switch (''CMS''), Financial Information Exchange Protocol (''FIX''), or other NYSE-approved industry standard format. According to the NYSE, such systems must submit a copy of the order details to the NYSE database upon receipt of the order by the member firm's proprietary system on the Floor.[9] In addition, the NYSE requires an ''as of'' time indicator for orders entered late due to system problems, and if this occurs, member firms would have to notify the Exchange by the end of the following day and provide documentation of the system problem that necessitated the use of an ''as of'' time indicator.

The Exchange represents that it intends to communicate its system plan to member firms, then finalize NYSE system specifications, and issue interface specifications to member firms. The effective date of the proposed rule will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. The Exchange represents that the NYSE systems have been tested; however, the implementation date is still subject to the completion of specification and design work, as well as the finalization of development, and cutover schedules.[10]

The Exchange believes that the implementation of this system will allow the NYSE to track more accurately via systemic records whether an order has been received on the Floor prior to its execution. The Exchange also believes it would address the issue of falsification of order entry times. Therefore, the Exchange believes that its ability to surveil for anomalous trading situations—such as on-floor trading and the creation of inaccurate records, frontrunning of orders, and improper execution of customers' orders—will be enhanced.

With regards to the enforcement of violations of the proposed rule, the NYSE represents that if it determines that a particular violation of this proposed rule is minor in nature, it could issue a cautionary letter. Moreover, the NYSE represents that it would consider seeking approval to add the proposed provisions of NYSE Rule 123 to the list of rules contained in NYSE Rule 476A, which provides for the imposition of fines for minor violations of rules. In those instances where the investigation reveals a more serious violation or repetitive violations of NYSE Rule 123, the Exchange represents that it would commence disciplinary procedures under NYSE Rule 476.[11]

III. Discussion

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, and, in particular, with the requirements of Section 6(b).[12] Specifically, the Commission believes that by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor, the proposal is consistent with the Section 6(b)(5)[13]

[8] Previously, BBSS could not accept orders with orders fractional prices less than 1/64th or integer prices greater than $99,999. The Exchange has updated the BBSS capacity to accommodate decimal pricing. The Exchange represents that under the new parameters, all orders should be compatible for entry into BBSS. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 20, 2000.

[9] According to the Exchange, ''upon receipt'' means as soon as practicable, but no later than 60 seconds after receipt. This 60 seconds is intended to provide flexibility in implementation and is not intended to be incorporated into proprietary systems; *e.g.,* a system that was programmed to routinely transmit a copy to the Exchange database system 60 seconds after receipt of an order would not comply with the system requirement.

[10] Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Jennifer Colihan, Attorney, Division, Commission, on November 21, 2000. The Commission notes, however, that pursuant to the SEC Order, Phase I of the Floor Audit Trail must be implemented within nine months after the date of this approval order. *See* In the Matter of New York Stock Exchange, Inc., SEC Release No. 34–41574, June 29, 1999; Administrative Proceeding File No. 3–9925 (''SEC Order'').

[11] The Exchange represents that it does not include specific reference to disciplinary matters in each rule because it believes the language in NYSE Rules 476 and 476A is all-encompassing.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

requirements that the rules of an exchange be 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 a national market system, and, in general, to protect investors and the public interest.[14]

The proposed rule change is intended to fulfill some of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) and Rule 11a–1 of the Act and NYSE rules 90, 95, and 111.[15] The SEC Order found that the NYSE's floor broker regulatory program suffered from two major deficiencies: (1) The NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers; and (2) the NYSE suspended its routine independent floor broker surveillance for extensive periods of time.[16] In addition, although not part of the findings in the SEC Order, the Commission's initial and amended complaints and the Office of the United States Attorney for the Southern District of New York's indictment charged, among other things, that independent floor brokers profited from the information they acquired on the NYSE floor by trading ahead of customer orders and, in some instances, engaging in frontrunning in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Act and rule 10b–5 thereunder.

As part of the SEC Order, the NYSE agreed and was ordered to continue the development and implementation of an electronic floor system (''Phase I Floor Audit Trail'') that will be used to enter details related to orders before these orders can be represented on the trading floor. To accomplish this undertaking, the NYSE was ordered to submit a proposed rule change setting forth the complete details and specifications of the Phase I Floor Audit Trail, and to fully implement the Phase I Floor Audit Trail nine months after Commission approval of the proposal. This proposed rule change addresses this undertaking. The Commission believes that, by strengthening the Exchange's ability to examine and surveil members' activities on the Exchange Floor, the proposed rule change is consistent with and is an important step toward satisfying certain of the undertakings relating to oversight of the trading floor.

The proposal requires that members and member organizations enter the details of an order before they can represent or execute the order on the floor of the Exchange. Among other things, the member must electronically time stamp the order before representing or executing it on the floor and must record any changes in the terms of the order or cancellations of the order.[17] The Commission finds that requiring members and member organizations to electronically record the details of an order before representing or executing the order on the floor will enhance the Exchange's ability to deter and detect violations of the securities laws and the Exchange's rules, such as trading ahead of customer orders or frontrunning. Specifically, the rule enhances the NYSE's ability to track the handling of an order from receipt until execution. For example, this information can be used to reconstruct markets to determine whether an independent floor broker traded ahead of a customer order. The Commission also finds that enhancing the surveillance of members' activities on the floor is consistent with the Exchange's responsibility, under Section 6(b)(5) of the Act, to prevent fraudulent and manipulative acts and practices.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–98–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32091 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See* note 10, *supra*.

[16] *Id*.

[17] The Commission notes that in a pending proposed rule change, the NYSE is proposing to require that members synchronize business clocks to record the date and time of any event that the Exchange requires to be recorded. *See* SR–NYSE–99–51 (proposal to implement Phase II of the Floor Audit Trail System).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43700; File No. SR–NYSE–00–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Maximum Original Listing Fee and To Impose a New Allocation Fee on Exchange Specialists

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4[2] thereunder, notice hereby is given that on November 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule chanve as described in items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to reduce the maximum original listing fee applicable to companies listing on the Exchanged and to recapture the lost revenue through an allocation fee imposed on Exchange specialists. The proposed rule change is available at the principal office of the NYSE and at the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] According to the NYSE, the proposed specialist allocation fee would not appear in the NYSE's rules or price list. Therefore, with respect to this part of the filing, there is no proposed rule text as such. The NYSE will notify affected members of the new fee via an information circular. Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on December 11, 2000.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

Original listing fees are levied on the number of shares issued and outstanding at the time of listing plus a one time special charge of $36,800 for a newly listed company. Currently, the NYSE caps original listing fees at $500,000. To accommodate prospective listed companies with a lower maximum fee while continuing to maintain revenue at a level suitable to support the Exchange's programs, the NYSE is proposing to reduce the original listing fee cap to $250,000.[4]

The reduction in listing fee revenues resulting from reduction of the maximum listing fee will be offset in total by implementation of a new Specialist Allocation Fee. Newly listed companies are allocated to a specialist unit through the Exchange's allocation process. Specialists apply for the allocation of new listings, and, upon listing, companies have the choice of one of two options for allocation of their security. The first option is to authorize the Exchange's Allocation Committees to determine who will be the company's specialist. Under the second option, the Allocation Committee selects a pool of between three to five specialists from those who have applied, and the listing company then interviews each of the candidates to determine who will be its specialist.

The new Specialist Allocation Fee will be levied on the specialist unit that has been selected, under either option one or option two, to be the specialist for the new listing. The fee will be equal to the difference between the original listing fee calculated under the new $250,000 cap and the fee that would have been applicable under a $500,000 cap. Accordingly, the Specialist Allocation Fee itself will be a maximum of $250,000. The following examples demonstrate how this fee will be applied in different circumstances:

Company A:	
Shares Outstanding	100 million
Calculated Fee Based on Per Share Rate.	$417,100
Listed Company Original Fee (Capped).	$250,000
Specialized Allocation Fee	$167,100
Company B:	
Shares Outstanding	50 million
Calculated Fee Based on Per Share Rate.	$242,100
Listed Company Original Fee (Capped).	$242,000
Specialized Allocation Fee	$0
Company C:	
Shares Outstanding	130 million
Calculated Fee Based on Per Share Rate.	$522,100
Listed Company Original Fee (Capped).	$250,000
Specialized Allocation Fee	$250,100

Both the reduction in the listing fee cap and the new Specialist Allocation Fee will be implemented January 1, 2000.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement of Burden on Competition

The NYSE does not believe that the proposed rule change would 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 the Proposed Rule Change Rreceived From Members, Participants, or Others

The NYSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 under the Act.[7] Pursuant thereto the rule change may become operative 30 days after November 29, 2000, the date of filing. At any time within 60 days of filing, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–48 and should be submitted by January 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32115 Filed 12–15–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The reduced maximum original listing fee will be reflected in an amendment to Sections 902.02 (domestic companies) and 902.04 (non-U.S. companies) of the NYSE Listed Company Manual.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12)

DEPARTMENT OF STATE

[Public Notice 3511]

Culturally Significant Objects Imported for Exhibition Determinations: ''William Blake''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''William Blake,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of

Art, in New York, NY, from on or about March 26, 2001 to on or about June 24, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 8, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–32145 Filed 12–15–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–70]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2000.

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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, 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 of Part 11.

Issued in Washington, D.C., on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: FAA–2000–8055.

Petitioner: Honeywell International, Inc.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Honeywell to make its Inspection Procedures Manual (IPM) available electronically to it's supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 11/06/2000, Exemption No. 7378*

Docket No.: FAA–2000–7982.

Petitioner: Pierce County Washington United Way

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit PCWUW to conduct a local sightseeing flight at Tacoma Industrial Airport, Tacoma, Washington, for a charitable event in October 2000, for compensation or hire, without complying with certain anti-drug alcohol misuse prevention requirements of part 135. *Grant, 10/27/2000, Exemption No. 7375*

[FR Doc. 00–32179 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–71]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2000.

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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, 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 December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8187.

Petitioner: Department of the Air Force.

Section of 14 CFR Affected: 14 CFR 91.169(b).

Description of Relief Sought/Disposition: To permit the Department of Air Force to list alternate airports in instrument flight rules (IFR) flight plans for military aircraft in accordance with regulations prescribed by the Department of the Air Force *Grant, 11/28/2000, Exemption No. 7389*

Docket No.: FAA–2000–8140.

Petitioner: Alaska Island Air, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit ASA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7387*

Docket No.: FAA–2000–8050.

Petitioner: Alexandria Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit AAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7384*

Docket No.: FAA–2000–8084.

Petitioner: Alpine Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit AHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7385*

Docket No.: FAA–2000–7990.

Petitioner: Lake and Peninsula Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit LPA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7388*

Docket No.: FAA–2000–7988.

Petitioner: RGT Air Freight.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit RGT to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 11/28/2000, Exemption No. 7386*

Docket No.: FAA–2000–8178.

Petitioner: Compoende Aeronautica Ltda.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/Disposition: To permit Compoende to use the calibration standards of the Instituto Nacional de Metrologia, Normalizaçao e Qualidade Industrial in lieu of the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 11/30/2000, Exemption No. 6550C.*

Docket No.: FAA–2000–7983.

Petitioner: Whisper Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 133.43(a) and (b).

Description of Relief Sought: To permit Whisper Airlines, Inc., to use its helicopters to conduct acts by an aerial performer on certain rigging apparatuses without using an approved external-load-attaching means or an approved quick-release device. *Grant, 11/20/2000, Exemption No. 6563B.*

Docket No.: FAA–2000–8100.

Petitioner: Northwest Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.401(c), 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F to part 121; and Special Federal Aviation Regulation (SFAR) No. 58, paragraph 6(b)(4)(ii)(A).

Description of Relief Sought: To allow NWA to combine recurrent flight and ground proficiency checks for NWA's flight crewmembers in a single annual training and proficiency evaluation program and meet the line check requirements of 121.440(a) and SFAR No. 58 through an FAA-approved alternative line check program. *Grant, 11/20/2000, Exemption No. 5815D.*

Docket No.: FAA–2000–7945.

Petitioner: Boeing Commercial Airplane Group.

Section of 14 CFR Affected: 14 CFR 61.57(a) and (b).

Description of Relief Sought/Disposition: To permit Boeing production and engineering flight test pilots to use any type of Boeing airplane or Level B, C, or D simulator that represents any type of Boeing airplane to meet the takeoff and landing recency of experience requirements of § 61.57 without Boeing holding a 14 CFR part 142 certificate. *Grant, 11/20/2000, Exemption No. 6843A.*

[FR Doc. 00–32181 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–72]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2000.

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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, 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 December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8218.

Petitioner: Bombardier Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1)

Description of Relief Sought: To relieve Bombardier Aerospace, Inc., from the requirements of 14 CFR 25.1435(b)(1) for static testing of a complete hydraulic system to 1.5 times the design operating pressure for the CL–600–2D24 (Regional Jet CRJ–900) airplane.

[FR Doc. 00–32181 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–73]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued.

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 January 8, 2000.

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, and you should submit two copies 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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, 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 of Part 11.

Issued in Washington, D.C., on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–7994.

Petitioner: AirNet Express.

Section of 14 CFR Affected: 14 CFR § 135.85.

Description of Relief Sought: To permit AirNet to carry cockpit crewmembers who are employed by other certificated air carriers on its all cargo Learjet aircraft.

Docket No.: FAA–2000–7993.

Petitioner: Federal Express Corporation.

Section of 14 CFR Affected: 14 CFR 45.15(a)(4) ad.

Description of Relief Sought: To Federal Express to install replacement or modification parts designated for installation on Douglas DC–10 airplanes on McDonnell Douglas MD–10 airplanes.

[FR Doc. 00–32182 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–74]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2001.

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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 8000

Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91 of Part 11.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8063.

Petitioner: Eagle Canyon Airlines, Inc. dba Scenic Airlines.

Section of 14 CFR Affected: 14 CFR 121.345(c)(2).

Description of Relief Sought/ Disposition: To permit Scenic Air to operate certain aircraft under part 121 without a TSO–C112 (Mode S) transponder installed on those aircraft. In your letter, you include a revised list of Scenic Air aircraft to be covered by the extension. *Grant, 10/13/2000, Exemption No. 6839A*

Docket No.: FAA–2000–8048.

Petitioner: Western North Carolina Pilots Association, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit WNCPA to conduct local sightseeing flights at Asheville Regional Airport, Asheville, North Carolina, for its two-day Fall Color Scenic Rides in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/20/2000, Exemption No. 7371*

[FR Doc. 00–32183 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–75]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2000.

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 9:00 a.m. and 5:00 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: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, 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 of Part 11.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8092.

Petitioner: Ms. Elizabeth C. Huck.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Ms. Huck to a conduct local sightseeing flight at Butler County Regional airport for a charitable event benefiting the Soroptimist International of Cincinnati club on a date before November 1, 2001, to be determined by you and the passenger(s), for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 11/03/2000, Exemption No. 7377*

Docket No.: FAA–2000–8000.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Delta to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 10/24/2000, Exemption No. 7376*

Docket No.: FAA–2000–7981.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To permit ATA member airlines and other similarly situated part 121 certificate holders to allow FAA air traffic controllers and certain technical representatives to ride in the cockpit observer's seat of all-cargo aircraft when those aircraft do not meet the passenger-carrying requirements of part 121 except as described in §§ 1212.583(b), 121.583(c), and 121.583(d). *Grant, 10/30/2000, Exemption No. 5562D*

Docket No.: FAA–2000–FAA–2000–7980.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 121.311(b).

Description of Relief Sought/ Disposition: To permit ATA-member airlines and other similarly situated part 121 operators to permit qualified flight attendants not required by § 121.391(c) to perform duties related to the safety of the airplane and its occupants during aircraft movement on the surface. *Grant, 10/24/2000, Exemption No. 5533D*

[FR Doc. 00–32184 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–76]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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 January 8, 2001.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARN–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of Part 11 of 14 CFR.

Issued in Washington, DC, on December 13, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 17145.

Petitioner: United Airlines.

Section of the 14 CFR Affected: 14 CFR 121.665 and 121.697(a) and (b).

Description of Relief Sought/ Disposition: To permit UAL to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature. Grant, 10/26/00, Exemption No. 2466L.

Docket No.: 24237.

Petitioner: Department of the Air Force.

Section of the 14 CFR Affected: 14 CFR 91.177(a)(2) and 19.179(b)(1).

Description of Relief Sought/ Disposition: To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace. The amendment you request would allow the United States Army Special Operations Command (USASOC), 160th Special Operations Aviation Regiment (160th SOAR) to operate under Exemption No. 4371, as amended, when the 160th SOAR and the Air Force Special Operations Command (AFSOC) are conducting joint operations. Grant, 10/25/00, Exemption No. 4371F.

[FR Doc. 00–32185 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on April 14, 2000, (65 FR 20257). Comments were due June 13, 2000. No comments were received.

DATES: Comments must be submitted on or before January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Evie K. Chitwood, Office of Intermodal Development, 400 Seventh Street, SW, Room 7209, Washington, D.C. 20590, telephone number (voice) 202–366–5127, (fax) 202–366–6988.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: ''Intermodal Access to U.S. Ports Survey'' ''Intermodal Access to U.S. Marine Terminals Survey.''

OMB Control Number: 2133–NEW.

Type of Request: Approval of a new information collection.

Affected Public: U.S. Ports and Terminals (including the top U.S. deepwater ports, the top container ports and the strategic ports as well as the major shallow draft ports).

Form(s): Forms MA–.

Abstract: The ''Intermodal Access to U.S. Ports Survey'' and the ''Intermodal Access to U.S. Marine Terminals Survey'' were designed to be a questionnaire of critical infrastructure impediments that impact the Nation's ports and marine terminals. The collection will provide key highway, truck, rail and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals. The annual data received will be used to statistically demonstrate the change in access impediments to the Nation's ports and terminals.

Annual Estimated Burden Hours: 81 Hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: December 13, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32162 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8537]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OLD TIMER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 17, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8537. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Old Timer.* Owner: Robert E. Smith.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''39′ 11″, Tonnage, gross 28, net 22, USCG simplified formula.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Dolphin watching cruises in local waters. Boat & Breakfast. Southeast U.S.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There are numerous dolphin charters in the area, which carry 30 or more passengers. Since I would be limited to the number of passengers, there should be no impact on these vessels. Also there are no Boat & Breakfast vessels in the area.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''No negative impact on U.S. shipyards. The only effect will be positive-ship repair.''

Dated: December 13, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32161 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 4)]

Railroad Cost of Capital—2000

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2000 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2000. The decision solicits comments on: (1) The Railroads' 2000 cost of debt capital; (2) the railroads' 2000 current cost of preferred stock equity capital; (3) the railroads' 2000 cost of common stock equity capital; and (4) the 2000 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 12, 2001. A service list will then be prepared and issued by January 26, 2001. Statements of the railroads are due by March 30, 2001. Statements of other interested persons are due by April 20, 2001. Rebuttal statements by the railroads are due by May 11, 2001.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 6.1, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-to-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339] A copy of the decision can also be obtained from the Board's Internet site (www.stb.dot.gov).

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 12, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–32155 Filed 12–15–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–434 (Sub–No. 2X)]

Winchester & Western Railroad Company—Abandonment Exemption—in Winchester, VA

Winchester & Western Railroad Company (W&W) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.63-mile line of railroad between milepost 115.27 and the end of the line at milepost 115.9 inside the city limits of Winchester, VA. The line traverses United States Postal Service Zip Code 22601.

W&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (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 and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 17, 2001, 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 December 28, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John D. Heffner, Esq., Rea, Cross & Auchincloss, Suite 570, 1707 L Street, NW., Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

W&W has filed an environmental report which addresses the effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 22, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. 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), W&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by W&W's filing of a notice of consummation by December 18, 2001, 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 website at ''WWW.STB.DOT.GOV.''

Decided: December 6, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31631 Filed 12–15–00; 8:45 am]

BILLING CODE 4910–62–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 in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Maintained By Brewers.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Maintained By Brewers.

OMB Number: 1512–0333.

Recordkeeping Requirement ID Number: ATF REC 5130/1.

Abstract: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax. The recordkeeping requirement associated with this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1 hour.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32137 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Equipment and Structures, Marks and Labels on Containers of Beer.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Marks on Equipment and Structures, Marks and Labels on Containers of Beer.

OMB Number: 1512–0478.

Recordkeeping Requirement ID Number: ATF REC 5130/3, Marks on Equipment and Structures and ATF REC 5130/4, Marks and Labels on Containers of Beer.

Abstract: Marks, signs and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of container contents, and to identify the brewer and place of production. This information collection requires the marking of tanks, containers and signs identifying rooms. There is no recordkeeping requirement associated with this collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1 hour.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32138 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Number: 1512–0116.

Form Number: ATF F 5200.11.

Abstract: ATF F 5200.11 documents removal or release of tobacco products without payment of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes.

Current Actions: The instructions have been revised on the form in order

to comply with the Cigarette Compliance Act of 2000.

Type of Review: Extension with changes.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 153.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 306.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32139 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Request for Disposition of Offense.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:

Title: Request for Disposition of Offense.

OMB Number: 1512–0390.

Form Number: ATF F 5020.29.

Abstract: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the Clerk of the Court or Custodian of Records to ascertain the disposition of the case. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32140 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Identification of Explosive Materials.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to William O'' Brien, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8171.

SUPPLEMENTARY INFORMATION:

Title: Identification of Explosive Materials.

OMB Number: 1512–0559.

Abstract: The regulations of 27 CFR 55.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,563.

Estimated Time Per Respondent: None.

Estimated Total Annual Burden Hours: 1.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32141 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts -2-Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.

OMB Number: 1512–0118.

Form Number: ATF F 2148 (5200.17).

Abstract: ATF F 2148 (5200.17) is necessary to secure payment for tobacco articles on which a drawback (refund on tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to and description of the what the bond covers. The recordkeeping requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32142 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for License, Collector of Curios and Relics.

DATES: Written comments should be received on or before February 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:

Title: Application for License, Collector of Curios and Relics.

OMB Number: 1512–0518.

Form Number: ATF F 7CR (5310.16).

Abstract: ATF F 7CR (5310.16) is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,500.

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.

Dated: December 8, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–32143 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning an information collection titled, ''Share Exchange Notification.''

DATES: You should submit written comments by February 16, 2001.

ADDRESSES: You should direct all written comments to the Public Information Room, Attention: 1557–SHEX, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202)874–4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Jessie Dunaway or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–SHEX), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing the following information collection:

Title: Share Exchange Notification.

OMB Number: 1557–to be assigned.

Form Number: Not applicable.

Description: This information collection consists of a notification of share exchange conducted by a national bank and its holding company. The OCC needs this information to ensure a public record of the share exchange and to provide an effective date of completion of the exchange in the event applicable state corporate law does not provide for applicability to nationally chartered institutions.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 25 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 12, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–32069 Filed 12–15–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice of the weighted average poverty threshold established for 1999 for one person (unrelated individual) as established by the Bureau of the Census. The amount is $8,501.

DATES: For VA determinations, the 1999 poverty threshold is effective September 26, 2000, the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: We published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31,579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty thresholds for 1999. The threshold for one person (unrelated individual) is $8,501.

Dated: December 11, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 00–32109 Filed 12–15–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
December 18, 2000

Part II

Nuclear Regulatory Commission

10 CFR Parts 30, 31, and 32

Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, and 32

RIN 3150—AG03

Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the use of byproduct material in certain detecting, measuring, gauging, or controlling devices, and devices to produce light or an ionized atmosphere. The amendments include explicit provisions for a registration process authorized under a provision of the existing regulations. A registration fee will be required for each registration. Although the amendments apply to all users of these devices (general licensees), the registration and associated fee apply to a limited fraction of these general licensees, not including, for example, users of exit signs. The final rule also modifies the reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices. The final rule is intended to allow the NRC to better track certain general licensees and the devices they possess, and to better ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material.

EFFECTIVE DATES: February 16, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264, or e-mail at CRM@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission (AEC) amended its regulations to provide a general license (10 CFR 30.21(c)) for the use of byproduct material contained in certain measuring, gauging, or controlling devices, and devices for producing light or an ionized atmosphere. Under the regulations currently in 10 CFR 31.5, certain persons may receive and use a device containing byproduct material under this general license that has been manufactured and distributed according to a specific license issued by the NRC or by an Agreement State. (An Agreement State is a State that has entered into an agreement with the NRC that gives it the authority to license and inspect persons using or possessing certain radioactive materials, called byproduct, source, and special nuclear materials, within their borders.) A specific license authorizing distribution of generally licensed devices is issued if a regulatory authority (the NRC, or where provided by a memorandum of agreement, an Agreement State) determines that the safety features of the device and the instructions for its safe operation are adequate and meet regulatory requirements.

The person or organization who receives such a device is a general licensee. These general licensees are subject to requirements for maintaining labels, following instructions for safe use, storing or disposing of the device properly, and reporting transfers and failure of or damage to the device. For some devices, the general licensee must also comply with testing requirements for leakage and for proper operation of on-off mechanisms. General licensees are also subject to the terms and conditions in § 31.2 concerning general license requirements, transfer of byproduct material, reporting and recordkeeping, and inspection. General licensees must comply with the safety instructions contained in or referenced on the label of the device and must have the testing or servicing of the device performed by an individual who is authorized to manufacture, install, or service these devices except as indicated on the label.

A generally licensed device usually consists of radioactive material, contained in a sealed source, within a shielded housing. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. The general license simplifies the licensing process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

There are about 40,000 general licensees authorized by § 31.5 to possess about 600,000 devices that contain byproduct material. The NRC has not contacted or inspected these general licensees on a regular basis because of the relatively small radiation risk posed by these devices.

Individuals who possess devices under this general license are not always aware of applicable requirements. The NRC is most concerned about occurrences where generally licensed devices have not been handled or disposed of properly. In some cases, this has resulted in radiation exposure to the public and contamination of property. Some generally licensed devices have been accidentally melted in steel mills causing considerable contamination of the mill, the steel product, and the wastes from the process (*i.e.* the slag and the baghouse dust). Although known exposures have generally not exceeded the public dose limits, there is a potential for significant exposures.

In July 1995, the NRC, with assistance from the Organization of Agreement States, formed a working group to evaluate the issues related to the loss of control of both generally and specifically licensed devices. The working group consisted of both NRC and Agreement State regulatory personnel and encouraged the involvement of all persons having a stake in the process and its final recommendations. All working group meetings were open to the public. A final report was published in October 1996 as NUREG–1551, ''Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices.'' In considering the recommendations of this working group, the NRC decided, among other things, to initiate rulemaking to establish an annual registration of some of the devices generally licensed under § 31.5.

The Atomic Energy Act of 1954 (AEA), as amended, provides the NRC with the authority to request information from its licensees concerning licensed activities. However, the Commission had not included an explicit provision in its regulations that would require § 31.5 general licensees to provide information on request. On December 2, 1998 (63 FR 66492), the Commission published a proposed rule to explicitly require general licensees who possess certain measuring, gauging, or controlling devices to provide the NRC with information about the devices. The final rule was published on August 4, 1999 (64 FR 42269), and became effective October 4, 1999. The NRC intends to use that general provision primarily to conduct a registration program. The NRC is using the criteria developed by the working group for determining which sources should be subject to the registration program. Registration is being required only for those devices considered to present a higher risk (compared to other generally licensed devices) of potential exposure of the public or property damage in the case of loss of control. This does not include self-luminous exit signs.

These criteria were based on considerations of risk and are limited to radionuclides currently used in devices covered under this general license. If quantities of other radionuclides that would present a similar risk are used in these devices in the future, the criteria may be revised to include the additional radionuclides.

That rulemaking was not made a matter of compatibility for Agreement States. The final rule was estimated to impact 5100 general licensees. However, in the interim, Ohio and Oklahoma have become Agreement States. Using the same criteria, and eliminating the general licensees in Ohio and in Oklahoma, approximately 4300 NRC general licensees will be subject to the registration requirement.

On July 26, 1999 (64 FR 40295), the Commission published another proposed rule to add specific requirements concerning the registration of devices and additional provisions for an enhanced regulatory oversight program for all § 31.5 general licensees. The rule also proposed to require compatibility for Agreement State regulations so that an increased level of oversight for general licensees in Agreement States would also be required. Some States have already instituted some form of enhanced oversight for these general licensees. In a few cases, States have instituted a registration program. Also, a few States have exercised a higher level of control over these devices by requiring specific licenses. The proposed category of compatibility for § 31.5 would have required the essential objectives of the regulation to be adopted by the States to avoid regulatory conflicts, duplications, or gaps. However, the manner of addressing the essential objectives of the regulation would not have been required to be the same as used by the NRC. Strict compatibility was proposed only for revisions to the requirements applicable to distributors. The Compatibility Categories assigned to some provisions have been reconsidered by the Commission. Changes to the proposed designations are discussed below.

General Discussion

The August 4, 1999, final rule provides one of the key elements in improving the accountability and control over devices of particular concern through the institution of a registration process. However, regulatory provisions were still inadequate to allow the NRC to track general licensees and the specific devices they possess. The NRC needs to keep track of these general licensees so that they can be contacted or inspected, when appropriate. The NRC also wishes to keep track of each generally licensed device, so that the responsible party can be identified when a device is found in an inappropriate situation. Tracking devices will also allow the NRC to contact the appropriate general licensees if a generic defect in a group of devices is identified. As previously noted, that rule did not require Agreement State regulations to be compatible.

There are other means for reducing the likelihood of incidents of lost sources. The Commission reconsidered the provisions in its 1991 proposed rule, evaluated the recommendations of the NRC-Agreement State Working Group, and identified additional issues concerning these devices in developing the proposed rule published on July 26, 1999, for public comment. The Commission has considered the public comments received on that rule, comments made on the December 2, 1998, proposed rule that related to the issues in this rule, and the comments made at two public meetings held on July 27–28, 1999, and October 1, 1999, in completing this final rule.

Summary and Discussion of New Requirements

Revisions to the Requirements for General Licensees Under § 31.5

Registration. This rule adds explicit provisions delineating the annual registration requirements, including the requirement for a registration fee. The registration fee will be established as a part of the FY 2001 fee rulemaking. The registration process is being initiated under the more general provision in § 31.5(c)(11), which became effective October 4, 1999. Paragraph 31.5(c)(11) requires licensees to respond to requests for information from NRC within 30 days or as otherwise specified. The provisions in this rule (new § 31.5(c)(13)) are consistent with the Commission's plans for the registration process discussed in the August 4, 1999, final rule. This final rule specifically requires that licensees verify information about devices through a physical inventory and by checking label information. The advantage of including more specific requirements in the regulation is that information about the registration process will be more clearly defined and more readily available. When the distributor of a device supplies copies of § 31.5 to its customers under § 32.51a(a), the potential general licensees will be made aware of the registration requirement, the devices to which it applies, the nature of the registration information, and the registration fee.

An organization that uses generally licensed devices at numerous locations is considered a separate general licensee at each location. Different facilities at the same complex or campus are not, however, considered separate locations. In the case of portable devices that are routinely used at multiple field sites, there is one general licensee for each primary place of storage, not for each place of use. Thus, an organization must complete more than one registration if it possesses devices subject to registration at multiple distinct locations.

The final rule adds a provision to specifically exclude Agreement State general licensees using a device in NRC jurisdiction for less than 180 days in any calendar year from the registration requirement. This is discussed further under section C.

A fee will be required for each annual registration. Based on the current budgeted costs, FTE rate, and the estimated number of general licensees subject to registration, the fee is expected to be approximately $440–$450. The FTE rate is the rate established in part 170 to recover the costs for a professional employee. The fee is not being finalized at this time because it is anticipated that the first registration subject to the registration fee would not be filed until FY 2002. Therefore, the final fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and number of registrants. The registration fee will be for each general licensee filing a registration under § 31.5(c)(13) regardless of the number of devices. As noted above, an organization is considered to be a separate general licensee at each address at which devices are used (or stored), and will be assessed a registration fee for each location of use. The first round of registration will be completed without assessing fees.

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), to recover approximately 100 percent of its budget through fees. Since OBRA–90 was enacted, all costs of the general license program have been recovered through annual fees paid by specific licensees. The registration fee will recover the cost of the general license program associated with this group of general licensees in an equitable way, as required by law. Those who use devices subject to registration under the general license will now bear the operational cost of the program instead of those who hold specific licenses.

The costs to be recovered through the registration fee will include the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, the costs of processing and reviewing the registrations, and the costs for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, may be exempt from the fee under § 170.11. Costs not recovered from this small segment of the general licensees registering devices will continue to be recovered from annual fees paid by holders of specific licenses.

This registration process is somewhat different from that used in the Commission's other registration programs, in which blank forms are filled out by registrants. Instead, registration requests containing the information recorded in the Commission's database are being sent, that ask the general licensee to verify, correct, and/or add to the information provided. This process is similar to the approach typically used by many States for the renewal of automobile registrations and is intended to be more efficient for the general licensees and the Commission.

The time of year for registration varies for licensees. However, NRC's requests for renewal of registration will be made approximately 1 year after the previous registration request for that licensee. Although registration is not required before the receipt of a device, the Commission plans to send requests for registration to new general licensees subject to registration that are identified in distributors' quarterly material transfer reports submitted under § 32.52 shortly after the NRC receives and records this information. If a general licensee has previously registered devices and receives additional devices requiring registration, the new devices will be registered when the annual reregistration is carried out.

Other revisions for § 31.5 general licensees. The rule establishes additional requirements for all general licensees under § 31.5.

(1) An explicit requirement for the general licensee to appoint an individual: to be responsible for knowing what regulatory requirements are applicable to the general licensee; to have authority to take required actions to comply with the applicable regulations; and through whom the general licensee carries out its regulatory responsibilities (new § 31.5(c)(12)).

Rationale: The ''person'' who holds a general license is usually a corporation, or public or private institution, rather than an individual. In practice, for the general licensee to comply with existing regulations, an individual in the corporation or institution must be aware of the requirements and be authorized to take the required actions. Appointing a specific individual to be responsible for knowing about and taking actions to comply with regulations is an appropriate operational practice. If a device is not subject to testing under § 31.5(c)(2), there are no routine actions required to be taken, because the requirements are generally restrictions on actions, such as not abandoning the device, or actions to be taken only in the case of particular, non-routine events, such as notification of NRC of the transfer or failure of the device. It is this type of situation where knowledge of the nature of the device, the general license, and the associated regulations is unlikely to be maintained and passed on to individuals using the device. Requiring the assignment of a specific individual to be responsible for knowing, and to have authority to take required actions for complying with, the regulations should improve the probability that the general licensees will comply with the regulations. This individual does not have to be physically present where and when the device is used and does not have to conduct all required actions, but should be responsible to ensure that the general licensee is aware of required actions to be taken. This assignment does not, however, relieve the general licensee of its regulatory responsibilities.

(2) A provision that limits the amount of time a general licensee can keep an unused device in storage and allows the deferment of testing (if required under § 31.5(c)(2) and (3)) during the period of storage; the final version includes an exception for devices in standby for future use (new § 31.5(c)(15)). These provisions do not relieve the general licensee from the requirement to register devices annually and pay a registration fee, if applicable.

Rationale: The rule limits to 2 years the time a licensee can keep a device and not use it. When a device is not in use for a prolonged time, it is particularly susceptible to being forgotten and ultimately disposed of or transferred inappropriately. Experience shows that often a device being held in storage indefinitely is being held to avoid the costs of proper disposal.

Some devices are subject to leak testing or testing of on-off mechanisms under § 31.5(c)(2) and (3). Normal time intervals for this testing are set for the particular device. If a period of storage exceeds the normal interval for testing, this testing will not be required until the device is to be put back into use again. This will relieve the burden of unnecessary testing during the period of storage as well as eliminate any unnecessary exposure that could occur during testing for that period. The final rule makes an exception to the 2-year limit for devices held in standby for future use if the licensee conducts quarterly inventories. Other options if a general licensee intends to use a device after a period of more than 2 years of nonuse, are, as noted in the proposed rule: the device could be sent back to the supplier to be held under the distributor's specific license until later use, or the general licensee could request an exemption from § 31.5(c)(15) indicating the reason(s) why the licensee intends to use the device after 2 years and prefers to keep it on site in the interim. Licensees should have appropriate reasons for holding a device in standby, such as when a gauge is kept on site as an essential spare part for a production process, or when a university or other research facility has intermittent needs for certain types of devices and a clear expectation of continued use at some point.

(3) A provision to allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to transfers to part 32 (and Agreement State) licensees; to allow transfers to other specific licensees but only with prior written NRC approval; and to add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device; the final version removes the exception to reporting in the case of device replacement (revision of § 31.5(c)(8)).

Rationale: This proposed revision provides some flexibility to the general licensee in transferring a device while ensuring that it is transferred appropriately. It allows a general licensee to transfer a device directly to a waste collector for disposal, rather than going through a distributor. It also allows the transfer of a device to other specific licensees, but requires NRC approval in these cases so that NRC can ensure that the recipient is authorized to receive the device. The final rule removes the exception to the transfer report requirement in the case of a device replacement. This change is

discussed below under ''Public Comments on the Proposed Rule.''

The inclusion of a recipient's license number in the report of transfer will better ensure that the general licensee has verified that the recipient is a part 32 licensee, a part 30 waste collection licensee, or a specific licensee under equivalent Agreement State regulations authorized to receive the device. It also provides an additional means for NRC to identify the recipient, because company names and addresses sometimes change. The addition of the date of transfer will make the transfer easier to track and help to ensure that the general licensee makes the report in a timely manner (required within 30 days of transfer).

(4) A provision to notify NRC of address changes, including name changes (new § 31.5(c)(14)).

Rationale: The quarterly reports required of distributors under § 32.52(a) and (b) are intended to provide NRC and the Agreement State regulatory agencies with the names of general licensees in their jurisdictions and the addresses where these general licensees can be contacted (under this rule, the mailing address for the location of use of the generally licensed device). These general licensees can then be contacted or inspected. If general licensees move their operations without notifying the NRC, or appropriate Agreement State agency, they may be difficult to locate. Even a change of name can cause mail to be returned. This requirement to report address changes applies to the mailing address for the location of use and, for portable devices, the mailing address for the primary place of storage, although the devices may be used at multiple field sites. Registration information may include more than one address. For those registering devices, changes in addresses other than the mailing address for the location of use will be provided at the time of the next registration. Changes to the general licensee, other than a simple name change, such as in the case of a sale of a company, require reporting of additional information under § 31.5(c)(9)(i).

This simple change of address notification is intended to keep track of licensee moves and to maintain current mailing address information.

(5) A revision of the information required to be sent to NRC in the case of device damage or failure, which adds a plan for ensuring that premises and environs are suitable for unrestricted access in the case of device damage or failures that are likely to, or are known to, have resulted in contamination; a change to the addressee for reporting information concerning a failure; a note that the criteria in § 20.1402, ''Radiological criteria for unrestricted use,'' may be applied by the Commission in the case of contamination in spite of the exemption in § 31.5(c)(10); the final version adds a clarification that byproduct material no longer in the device may only be transferred to a licensee authorized to receive it or as otherwise approved by the Commission. (revision to § 31.5(c)(5)).

Rationale: General licensees are not subject to decommissioning requirements. A general license is granted by regulation and, under normal circumstances, does not involve any termination of license process. If a generally licensed device fails or is seriously damaged so as to cause significant contamination of the premises or environs, the NRC may respond to the notification of an incident made under § 31.5(c)(5) to ensure that a facility is properly decontaminated. Following this type of incident, the NRC would determine what actions are necessary on a case-by-case basis and, if necessary, would apply the criteria set out in § 20.1402, ''Radiological criteria for unrestricted use.'' The general licensee is exempt from this section of part 20 when in possession of an intact generally licensed device. However, when a device has been damaged, the material in the device may no longer be fully contained within the device (*i.e.,* it may also be unsealed radioactive material). The NRC can take action under § 30.61, ''Modification and revocation of licenses,'' as this section is applicable to general licensees. The revision in this action requires that the general licensee propose to the Commission how it will be shown that the premises are or will be adequately cleaned up. Depending on the nature of the event, the remedial action taken (and reported under preexisting requirements) along with any confirmatory surveys may be sufficient.

The addressee for submitting information under § 31.5(c)(5) is being changed from Regional Administrator to Director, Office of Nuclear Material Safety and Safeguards so there will be a single addressee specified in § 31.5 for reports by these licensees and to eliminate the need for the general licensee to refer to part 20 to determine the appropriate addressee. The addressee and address for registration are specified in the NRC registration request. Adding a note concerning the possible applicability of § 20.1402 is a clarification.

(6) A revision of the reporting requirement, in the case of a transfer to a general licensee taking possession of a device at the same location, to provide the serial number of the device and the name, title, and phone number for the person designated as the responsible individual, rather than simply a contact name, and specifying the required address as the mailing address for the location of use; the final version also adds to the information to be provided by the transferor to the transferee, copies of additional applicable regulatory provisions. (revision to § 31.5(c)(9)(i)).

Rationale: Consistent with the provision for appointing an individual through whom the general licensee will ensure compliance with the applicable regulations and requirements, and other new reporting requirements, it is more effective for the general licensee to provide the name of the new responsible individual when another general licensee takes over the facility and responsibility for the device. The additional change in the final rule is to ensure that new general licensees receive appropriate regulatory information, even in the case of a transfer from another general licensee.

An additional amendment to § 31.5 is intended to clarify the status of a person who receives a device through an unauthorized transfer and also removes a restriction on devices. Paragraph (b) is revised to (1) limit the applicability of the general license to those who receive a device through an authorized transfer, and (2) remove the restriction to the applicability of the general license to devices authorized for distribution by an Agreement State that have a general license covering these devices within that State.

Concerning the first of these issues, the NRC has generally interpreted the general license to apply to any recipient within the group identified in § 31.5(a) (*i.e.,* ''* * * commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies..''), even if the device is received through an unauthorized transfer. The new language clearly provides that the general license does not apply if the device is obtained through an unauthorized transfer. In the case of an unauthorized transfer, the recipient would possess the device without a license.

Paragraph 31.5(b) previously restricted applicability of the general license in the case of devices from distributors in Agreement States, to those devices from Agreement States

that authorize the devices to be used under a general license within their respective States. However, the NRC practice has been to allow a device to be used under the general license in § 31.5, that is distributed in accordance with a license issued under equivalent regulations to § 32.51 by an Agreement State that did not authorize devices to be used under a general license within their State. This approach reserved for NRC the right to require distributors in this situation to obtain an NRC distribution license to transfer devices into NRC jurisdiction, but did not require them to do so as long as the State issued acceptably equivalent licenses. Through NRC's oversight of Agreement State programs, NRC ensures the safety of these devices. Given this fact and the experience to date with these few States, the Commission believes that this restriction is no longer necessary. In addition, under the change of the compatibility requirement to category B, these Agreement States should be establishing a comparable general license provision in the future.

In addition to the changes to § 31.5, other amendments are being made that clarify which sections of the regulations in part 30 apply to all of the part 31 general licensees. Section 31.1, ''Purpose and scope,'' is amended to clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees. Section 31.2, ''Terms and conditions,'' is amended to reference the sections of part 30 that are applicable to all of the part 31 general licensees, including § 30.7, ''Employee protection,'' § 30.9, ''Completeness and accuracy of information,'' and § 30.10, ''Deliberate misconduct.'' The clarification makes it easier for general licensees to be aware of applicable regulations. In addition, future amendments to part 30 that would apply to part 31 general licensees would include a conforming amendment to part 31. Note, however, that while § 31.2 specifies sections of part 30 generally applicable to general licenses, it does not eliminate the applicability of other parts of the Commission's regulations that may apply.

The applicability of § 30.34(h) on bankruptcy notification to general licensees also needed clarification. Under the previous regulations, this requirement appeared to apply to all licensees. However, because it was not referenced in § 31.2 or § 31.5, its application to general licensees was not clear. This rule makes the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement. These licensees possess devices for which the Commission believes a higher level of oversight is appropriate. Thus, notification that such a general licensee is filing for bankruptcy may be important to allow the Commission to intervene to ensure that the financial status of the licensee does not lead to the improper disposal or abandonment of a device.

Requirements for Manufacturers and Initial Distributors of Devices

This rule modifies the requirements for specific licensees who distribute these generally licensed devices, specifically, the quarterly transfer reporting, recordkeeping, and labeling requirements and the requirement for providing information to users. These requirements are a matter of strict compatibility for Agreement State regulations, that is, the State regulations were required to be essentially identical to NRC regulations. The amendments are also a matter of strict compatibility so that revisions to Agreement State regulations will be necessary and distributors in Agreement States will be affected. The basis for this compatibility requirement is significant direct transboundary implications because devices are distributed under various Agreement State and NRC authorities into other jurisdictions where different regulatory agencies regulate the possession and use of the devices. There are now 21 NRC licensed distributors and approximately 83 licensed distributors in Agreement States.

Reporting. Paragraphs 32.52(a) and (b) are revised to require the following additional information in the quarterly transfer reports: (1) The serial number and model number of the device; (2) the date of transfer; (3) for devices received from a general licensee, the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; (4) information on changes to required label information; (5) name and license number of reporting company; and (6) the specific reporting period. The model number of the device was already required in reports to Agreement States. The general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements replaces the name and/or position of a simple contact between the Commission and the general licensee.

A form will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information. The new information must be included beginning in the report which covers the first full reporting period occurring after the effective date of the rule.

The previous reporting requirement was intended to provide NRC and the Agreement State regulatory agencies with the identity of general licensees in their jurisdictions, addresses at which the general licensees could be contacted (which were usually the location of use of the devices), the particulars of the type of device possessed, and the name (or position) of an individual who constitutes a point of contact between the NRC or the Agreement State and the general licensee. These general licensees can then be contacted or inspected. Including the serial number will allow the NRC and Agreement States to keep track of individual devices distributed in the future.

The previous reporting requirement in § 31.5(c)(8) did not require the general licensee to report a transfer if it were for the purpose of obtaining a replacement. This was consistent with the original intent of this regulation in that the status of the general licensee is unchanged, only the specific device is changed. For individual devices to be tracked, the NRC or Agreement State needs to be informed of such a transfer. The proposed rule would have required that the distributor provide this information either to NRC or the appropriate Agreement State specifically in the case of devices replaced. Under preexisting requirements, quarterly reports are required to include specifics on any new device transferred but not on the devices returned. The final rule requires information for all devices received from a general licensee. The NRC believes that the distributor can include this additional information in the quarterly reports without a significant burden and that it will be simpler than the proposed provision involving identification of replacements. Experience shows that the distributor is likely to be more reliable than the general licensee in providing this information. Including this information will also verify receipt of the devices.

The name and license number of the reporting company and the specific reporting period are typically included in the reports to show compliance with the reporting requirement. However,

this information is not always readily identifiable.

The individual who acts as contact with the NRC or the Agreement State concerning the general license should have knowledge of the device, the general license, and the regulations pertaining to the general license, or at least know who in the organization does. This was the intent of the previous requirement. However, in practice, the name given to the distributor and reported to the NRC (or the Agreement State) frequently was not an individual with this type of knowledge. The rule specifies that the contact designated be the person (1) assigned responsibility for ensuring that the general licensee is aware of its regulatory responsibilities, and (2) who has authority to take required actions for complying with the applicable regulations.

Recordkeeping. The final rule revises the content of recordkeeping requirements in § 32.52(c) by requiring maintenance of supporting information for the revised reports. The period of retention for recordkeeping requirements concerning transfers is reduced from 5 years from the date of the recorded event, to 3 years from the date of reported event.

All of the information needed to generate the transfer reports must be kept long enough for NRC to receive and process the information, identify and resolve any discrepancies or require any needed clarifications. It is very important that this information is reported and recorded correctly as it takes the place of the application and approval process in obtaining, amending, and terminating specific licenses.

In addition, distributors are required to make records of final disposition of devices available to the various regulatory agencies in the case of bankruptcy or termination of license (new paragraph § 32.51a(e)). When a distributor goes out of business and terminates its license, the distributor can no longer be required to retain these records. This requirement will give NRC, as well as State regulatory agencies, the opportunity to obtain records of this type kept by the distributor. These records could be helpful in verifying information used to track devices relative to the final disposition of devices. This provision does not require distributors to automatically provide these records unless the NRC or the Agreement State in which the device was distributed makes a request for these records. In the case of bankruptcy, NRC or the Agreement State may want to secure these records early in the process, in case financial difficulties interfere with the licensee fulfilling its responsibilities.

Labeling. The final rule amends the existing labeling requirements to require an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration (new paragraphs § 32.51(a)(4) and (5) and § 32.51a(d)). The NRC will consider a label ''permanent,'' if, for example, it were embossed, etched, stamped, or engraved in metal. Under these requirements, new distributors will have labels approved as part of obtaining a license; distributors, including existing licensees, have the new labeling requirements as conditions of license in § 32.51a(d). Approval of the new labels by NRC for existing distributors is not required. However, distributors may voluntarily submit information for NRC review on how they plan to comply with the new labeling requirements. In any case, labeling is subject to inspection. The new labeling requirements supercede anything contradictory in individual license conditions. The individual license conditions will be updated to include specifics related to the new requirements during the first license renewal or amendment following the effective date of those paragraphs of the rule.

The first change simply carries out the initial intent of the previous requirement for devices where the source may be separable in a housing that does not include the label. It is important that this housing, if separated from the remainder of the device, can also be identified. The permanent label for devices requiring registration will provide better assurance that even when a device has been exposed to other than normal use conditions, for example, when a building has been refurbished or demolished with the device in place, the label will be intact and the device may be identified and proper actions can be taken. Distributors have 1 year after the effective date of the rule to implement these changes to minimize any impact to the manufacturing and distributing process.

Information to be provided to general licensees. The final rule amends the requirements pertaining to the information distributors must provide to the general licensee (§ 32.51a(a) and (b)). Distributors have been required to provide general licensees with a copy of § 31.5 when the device was transferred. The rule requires that a copy of § 31.5 be provided before transfer. The final rule allows omission of paragraphs that are not applicable to the particular device. The distributor will also be required to provide: (1) Copies of additional applicable sections of the regulations; (2) a listing of the services that can only be performed by a specific licensee; (3) information regarding disposal options for the devices being transferred; and (4) a statement indicating that NRC's policy is to issue high civil penalties for improper disposal. This last item was added in the final rule and is applicable only for transfers to NRC general licensees. The disposal options are to include the estimated cost for disposal of the device. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor will furnish the name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained. The final rule provides that the distributor may propose for Commission approval some alternative to that prescribed for adequately disclosing information to their customers (new § 32.51a(c)).

The general licensee should be aware of the specific requirements before purchasing a generally licensed device, rather than afterward. While the Commission does not want to get involved with details of licensees' business practices, it is the Commission's intent that ''prior to transfer'' will be before a final decision to purchase so that the information can be considered in making that decision.

While § 31.5 contains the primary requirements related to the general license, it does not reference the applicable sections of part 30; thus, § 31.2 should also be provided. The general licensee should also have copies of at least those regulations that may require an action on his part, so §§ 20.2201, 20.2202, and 30.51 are added. The sections of the regulation that are included in this requirement are believed to be the most important for the general licensee to be aware of. The inclusion of a listing of services that can only be performed by a specific licensee will clarify the services that can and cannot be performed by the general licensee. These services vary depending on the nature and design of the particular device and so are not specified in the regulations. Information on the estimated cost for disposal of the device at the end of its useful life may be a significant factor in a decision to purchase a device because of the high costs of disposing of radioactive materials. In some cases, the cost of

disposal could exceed the purchase price of the device.

Additional clarifying amendments are being made in §§ 30.31, 30.34(h), and 31.5(c)(9)(ii). The amendment to § 30.34(h) is consistent with the previously discussed change concerning reporting bankruptcy.

The revision of § 31.5(c)(9)(ii) to include the term, ''intermediate person,'' is intended to provide clarification about intermediate persons holding devices for later use by an end-user. Specifically, intermediate persons holding devices in their original shipping containers at their intended location of use are general licensees. Distributors licensed under § 32.51, or equivalent Agreement State regulations, must provide information about both intermediate persons and intended users in their quarterly reports submitted under § 32.52(a) or equivalent Agreement State regulations. Transfers from intermediate persons to intended users under § 31.5(c)(9)(ii) do not need to be reported to NRC because information about the intended user must be reported by the distributor under § 32.52(a) or equivalent Agreement State regulations.

Public Meetings

An Agreement State Workshop, open to the public, was held on July 27–28, 1999, just after publication of the proposed rule. The purposes of the workshop were to answer questions to clarify the proposed provisions, to solicit input of the Agreement States on a number of particular issues related to the rulemaking, and also to discuss an application from Seaman Nuclear to allow certain moisture density gauges to be distributed for use under § 31.5. Specific topics included: compatibility and timing of compatible requirements, moves between different jurisdictions, temporary work locations in a different jurisdiction, increasing civil penalties for lost or improperly disposed devices, and lessons learned from Agreement State programs for increased accountability. There were a wide range of opinions concerning such issues as compatibility requirements and portable devices. Although not included in the detailed discussion of written public comments below, the opinions expressed were considered in developing this final rule and implementation procedures.

Another public meeting was held on October 1, 1999, to discuss implementation issues related to this rulemaking and related aspects of the program being developed to improve accountability of generally licensed devices. The focus of the meeting was to obtain input from the distributors of these devices concerning the practical aspects of implementation and how the program could be most efficient and effective. Most of the issues discussed at the meeting were reflected in written comments submitted by the distributors and others. A few issues were discussed more explicitly at that meeting than in the written comments discussed below. The following takes note of the few points made specifically at the meeting and not included in written comments. A transcript of the meeting is available on the NRC website at: http://www.nrc.gov/NRC/PUBLIC/GLTS/index.html.

Public Comments on the Proposed Rule

The NRC reviewed the public comments received on the July 26, 1999 (64 FR 40295), proposed rule. Thirty-nine comment letters were received, including one which provided supplemental input from the same commenter. The commenters included: The Steel Manufacturers Association (SMA), the Nuclear Energy Institute (NEI), the National Automobile Dealers Association (NADA), three Agreement States, one non-Agreement State, twelve distributors of generally licensed devices, a couple of utilities, several other specific licensees who are also general licensees, and several general licensees. One source material licensee also wrote in about a loss of control problem related to an exempt source material product.

Most commenters were supportive of the rule with respect to the goals and primary provisions. Most negative comments came from users and sellers of tritium exit signs, some of whom had not realized that the registration and fee provisions were not proposed to apply to users of tritium exit signs. A few others thought the impact on general licensees was too great. These included one distributor of a thickness gauge using Am-241 who voiced strong opposition to the proposal.

A few commenters, including the State of New Jersey and the SMA, thought that the rule did not go far enough to solve the problems of accountability of radioactive sources. For example, a few noted that the rule did not address improvement of accountability for specifically licensed devices.

Most of the distributors of generally licensed devices generally supported the proposed rule, but all raised some concerns about implementation problems related to specific provisions of the rule. Some of these concern the variations among the numerous industries using devices falling under this general license. Both the distributors and their customers vary widely in size and type of organization and how they do business.

A. Broad Comment About Applicability of the Requirements

Comment: One commenter thought that tritium exit signs should be exempt from general license requirements. A few general licensees were concerned with the possible applicability of registration and fees to tritium exit signs. A few commenters did not support applying any of the new provisions to any of the general licensees other than those included in the registration requirement. Three distributors of exit signs recommended that exit signs be removed from the § 31.5 general license and covered by a separate section of the regulations. This was in part related to their contention that fewer requirements should be applied. Another reason given was the confusion created by the fact that § 31.5 includes some provisions that do not apply to exit signs. These commenters discussed the low hazard presented by exit signs, the fact that they are an important safety device, and the difficulties of applying some of the provisions of the rule to such a large number of devices and diverse categories of users. One commenter, however, suggested that exit signs be handled differently because they are more likely to be disposed of improperly than an expensive gauge.

Response: Because exit signs do not require any testing, there are no routine actions to be taken by the user. As a result of this, the types of users involved, and, in some cases, misleading information provided by at least one distributor of exit signs, users of exit signs generally have the lowest level of awareness of the regulations. Although they do represent a relatively low potential for public exposure, it would not be appropriate to exempt them from all requirements, such that all would be disposed of in normal trash. The Commission believes that the requirements added for all § 31.5 general licensees are not burdensome and are justified to improve general licensee awareness of responsibilities and accountability for the devices. These general licensees are not subject to the registration and fee requirements.

There is difficulty with presenting adequate information to the users of devices, particularly exit signs, without causing confusion due to the amount and complexity of the information. The final rule provides some flexibility in the requirement for providing information to prospective customers.

This is discussed further below under § 32.51a in section B.

Comment: Three of the commenters were concerned that some of the requirements were inappropriate and unnecessary for power reactors using such devices. They suggested that power reactors should be exempt from all general license requirements. Two of these commenters suggested that all specific licensees should be excluded. One commenter suggested that the requirement to obtain written NRC approval before transferring an item to a licensee's specific license will be unnecessarily costly, time consuming, and cumbersome. The commenter stated that when the specific license already authorizes possession of the type of material in question, a notification to the NRC of the transfer, in lieu of obtaining permission, will still enable NRC to track the devices. This commenter believed that a notification in this case would be more cost effective and efficient for industry.

Response: Although this might be true to some extent, the reporting system that allows the Commission to keep track of generally licensed devices presents some difficulties with exempting some specific licensees from the general license requirements. For example, inputting the data from the material transfer reports would involve the additional step of identifying and eliminating those exempt. Also, devices sold as generally licensed devices are labeled to indicate that they are generally licensed. As mentioned in the Statement of Considerations for the proposed rule, specific licensees have the option of obtaining devices under their specific license initially or transferring a generally licensed device to a specifically licensed status. This latter option is not particularly difficult, especially for reactor licensees and broad scope licensees, who already have broad authority to possess radioactive materials. The communication with the NRC allows NRC to update its information on licensee status and ensure that the appropriate authority is in the particular license. Specific licensee users and distributors should communicate about whether a new device is to be held under a general or specific license. It should be labeled appropriately. If it is to be specifically licensed, it should not be included in distributors' material transfer reports.

Comment: One commenter asked whether the Commission intends to reclassify any devices from general license status to specific license status or vice versa.

Response: The Commission does not plan on making any regulatory changes at this time that would affect whether a device may be distributed for use under the general license in § 31.5. The criteria on which a decision to allow a device to be used under the general license in § 31.5 are contained in § 32.51. A specifically licensed device could be reclassified as generally licensed using these criteria through a licensing action.

Comment: One commenter recommended that the proposed rule be modified to require annual registration by specific licensees of devices and sources containing the radionuclides and activities specified by § 31.5(c)(13)(i).

This commenter provided the following reasons for taking the position that there is no basis for requiring special registration, labeling, etc. for generally licensed devices when there are no comparable regulations for sources and devices with the same radionuclides that happen to be held under specific licenses. The commenter noted that naturally occurring radioactive material (NORM) is the largest single contributor to the problem of radioactive contamination in metal scrap, that NRC has not been given authority to regulate the use of naturally occurring or accelerator-produced radioactive material, and that this limitation on NRC's jurisdiction is a serious problem in itself and an issue that should be reviewed. The proposed rule also ignores a large fraction of sources and devices that are major contributors to the metal scrap problem and that NRC does have clear authority to regulate. The commenter stated that specifically licensed devices generally contain larger quantities of the same radionuclides (*e.g.* cobalt-60 (Co-60) and cesium-137 (Cs-137)) that have been identified for special requirements in the proposed rule for general licensees and that loss of source/device control is not limited to general licensees. The commenter believes that whenever the justification for ignoring specific licensees in the proposed rule has been addressed, much has been made of the ongoing contact between the licensee and NRC and believes that this ongoing contact is greatly overstated. In fact, many specific licensees go years between inspections and license renewals—ample time for organizational changes that compromise source/device accountability.

Another commenter stated that the proposed rule has become so extreme that some sections require more information of general licensees than from existing specific licensees. The commenter contended that the NRC must establish some sense of consistency in order to meet the goals and objectives outlined in SECY–97–273 dated November 26, 1997. Some examples of inconsistency noted were reporting of specifics on devices and individual transfers and the suggestion of a backup responsible person.

Response: As noted by the commenter, NRC does not have jurisdiction to control sources of NORM or accelerator-produced radioactive material. Although it is true that some specific licensees are not inspected very often, the regulations in place provide an adequate basis for requiring accountability for specifically licensed devices. In any case, the scope of this rulemaking is limited to devices generally licensed under § 31.5.

Comment: One commenter requested that because the intent of these proposed regulations is to increase the oversight of 5,100 licensees with 20,000 sources deemed higher risk, paragraphs 31.5(c)(12), (c)(14), and (c)(15) should only be applicable to general licensees who must register under § 31.5(c)(13), and not to all general licensees. Otherwise, the burden is imposed upon 40,000 general licensees with 580,000 devices. The commenter suggested grouping these paragraphs with the registration requirements or reference the applicability to § 31.5(c)(13).

Response: Although the registration process is being limited to higher risk devices, it is desirable to improve licensee awareness of regulatory responsibilities and accountability for all devices generally licensed under § 31.5. The provisions being applied to all § 31.5 general licensees are considered to be an appropriate means of doing so with minimal burden on licensees and NRC staff. As discussed below, some revisions have been made to § 31.5(c)(15) to minimize burden, and to § 31.5(c)(14) for clarity.

Comment: One distributor who currently sells very few generally licensed devices asserts that the cost of changing systems and procedures and of training personnel to implement the proposed requirements would be very significant relative to the income derived from sales of these devices. Further, he contends that the registration program fees would adversely affect existing customers and discourage potential new customers from buying these products.

Response: For most devices subject to registration, the registration fee is considered to be small compared to the cost of the device. The NRC does not believe that the fees represent a significant burden to industry for the benefits gained. The registration fee will be established in 10 CFR part 170 under the Independent Offices Appropriation

Act (IOAA), which authorizes agencies to charge fees for special benefits rendered to identifiable persons. The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority, less amounts appropriated from the Nuclear Waste Fund, by assessing IOAA and annual fees. The registration fee will be established as part of the FY 2001 fee rulemaking and will be based on the budgeted costs and FTE rates for that FY, as well as the number of general licensees subject to registration. Based on the current estimated budgeted costs, FTE rate, and, estimated number of general licensees in this group, we expect the registration fee to be approximately $440 to $450.

B. Comments Relating to Specific Provisions of the Proposed Amendments

Requirements for General Licensees

Section 30.31—Revision to reconcile the apparent conflict between the description of a general license and a registration requirement.

Comment: One commenter noted that the registration of particular general licensees is mentioned in § 30.31(b), stating that the registration requirements, however, are buried in § 31.5(c)(13). The commenter thought that the provision would not easily be located by general licensees, many of whom do not regularly read the regulations.

Response: Section 30.31 is a general description of the two types of licenses provided by the Commission for the use of byproduct material (general and specific). Section 31.5 contains the primary requirements applicable to these general licensees and would be the requirements the general licensees are most likely to be aware of.

Section 30.34(h)(1)—Revision to make the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement.

Comment: Two commenters believed that the bankruptcy reporting requirement should apply to all general licensees. One stated that the requirement imposes little additional burden on licensees, and the possibility that a licensee could lose sources is heightened following bankruptcy.

Response: The Commission does not believe it is justified to apply this requirement to all general licensees. There would be limited additional benefit with requiring bankruptcy reporting for users of relatively low risk devices. The costs to be considered include, in addition to the minimal effort required for licensees to report bankruptcy, the efforts involved in making and keeping the general licensees aware of such a requirement, enforcing it, and following up on reports of bankruptcy.

Section 31.1—Revision to clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees.

Section 31.2—Revision to clarify references to the sections of part 30 that are applicable to all of the part 31 general licensees.

Comment: One commenter stated that, in order to clarify which parts apply to general licensees, all the items that apply to a general licensee should be put in one place in the regulations so that a booklet can be given to a general licensee by the NRC or the manufacturer and the general licensee will have all the necessary information in one place.

Response: This would create a great deal of duplication in the regulations. The information that this rule will require distributors to provide to their customers will include copies of the primary applicable requirements. The Commission is also developing a pamphlet summarizing basic information the general licensee needs to know. It appears as Appendix K in the draft of NUREG–1556, Vol. 16, ''Consolidated Guidance about Material Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees.'' This document will be published in final in the near future. The pamphlet may be used by NRC, the Agreement States, or the distributors of generally licensed devices as information for general licensees.

Section 31.5(c)(2) through (4)—No revision.

Comment: One commenter suggested that even though a six-month physical inventory is implied by the testing requirements, it should be clearly stated and the licensee must be required to verify, as a minimum, the name plate information (*i.e.*, manufacturer, model and serial number, assay date, isotope, activity, location of device).

Response: The Commission does not believe at this time that adding an inventory requirement for all generally licensed devices is appropriate. Those persons subject to registration will be required to conduct an annual inventory as part of the registration process. Those subject to testing must test and make records of testing at various intervals applicable to the particular device; this involves an inventory process to ensure compliance with the testing and recordkeeping requirements. For at least some of the devices that are not subject to either testing or registration, such as exit signs, a requirement to check all the name plate information every six months would not be justified.

Section 31.5(c)(8)—Proposed revision to allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to previously allowed transfers to part 32 (and Agreement State) licensees; to allow transfers to other specific licensees, but only with prior written NRC approval; and to add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device.

Comment: Most comments on § 31.5(c)(8) concerned possible confusion over the concept of ''replacement.'' There was considerable concern for this problem also with respect to the use of ''replacement'' as a determinant in the reports of receipts made by distributors under § 32.52.

Response: The concept of ''replacement'' was previously in § 31.5(c)(8). Reports of transfer were not required if the device transferred was being replaced. The original intent of the reporting requirement was only to maintain up-to-date information on the basic status of the general licensee, such as whether a licensee possesses a particular type of device. Given this purpose, potential problems with the general licensee reporting under § 31.5(c)(8) were limited. The proposed rule would have extended the use of ''replacement'' as a determinant on whether a particular type of transfer needed to be reported by the distributor under § 32.52(a) or (b). This was proposed in order to minimize changes being made to the requirements for general licensees. However, this would have created greater practical problems for the distributors with respect to § 32.52(a) or (b), as discussed below. The use of the replacement process as a determinant as to who must report a particular transfer has been removed from the final rule. Paragraph 31.5(c)(8) has been revised to require the general licensees to report all device transfers to NRC even if they are obtaining a replacement.

Section 31.5(c)(9)(i)—Proposed revision to add to the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, the serial number of the device and the name and phone number of the person identified as having knowledge of, and authority to take required actions to ensure compliance with, the appropriate regulations and

requirements, rather than simply a contact name.

Section 31.5(c)(9)(ii)—Revision to add the term, ''intermediate person,'' to clarify that a report of transfer is not required only in the situation where the information on both an intermediate person and an intended user would have been provided through the distributor in a quarterly material transfer report.

Comment: One comment on § 31.5(c)(9) concerned the words describing the responsible individual. This commenter thought this person should be in management as in EPA permits or OSHA standards, and that a certified statement be required by the president/ owner, etc. Another commenter stated that a general licensee taking over a facility should provide the name of a responsible individual (and backup) and that these individuals should have knowledge of the device, general license, and relevant regulations.

Response: The Commission believes that it is adequate for there to be an individual assigned the responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. These requirements will apply to the new general licensee as well. However, it is the general licensee transferring the property who is required to provide the information on the new general licensee, including the name of the new responsible individual, to NRC.

Section 31.5(c)(12)—New provision to add an explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations.

Comment: A number of commenters specifically supported the concept of assigning a responsible individual. No one specifically objected to the requirement, although one suggested that the requirement be limited to those subject to the registration requirement. Most who commented on this subject were concerned about the following issues:

1. Further clarification that the ultimate responsibility resides with the general licensee;
2. Whether the responsible individual must be present on site at the location of use; and
3. Whether the responsible individual must be an employee of the general licensee.

One commenter wanted the rule to specifically require documentation that the individual has been informed of their assigned responsibilities. Some commenters gave support for allowing the responsible individual to be a non-employee, stating that a consultant may be more likely to be well informed and make sure management is also informed. Some commenters also supported flexibility in assigning someone who is not on site, one stating that centralized radiation safety programs may be best. One specifically wanted to know if the RSO (Radiation Safety Officer) for a specific licensee would have to fill the role of responsible individual. One commenter thought that these clarifications needed to be made in the regulation itself.

Response: On the first of these issues, the rule specifically notes that the general licensee is not relieved from responsibility. Beyond this, it should be understood that responsible individuals will be answerable to their management as they would regarding any assigned duties, but the general licensees are answerable to the Commission for meeting regulatory requirements. It should also be understood that a person who is assigned duties must be made aware of those duties in order to perform them. The Commission should not need to require documentation of these internal procedures of the general licensees.

The proposed rule text did not include restrictions on who can be appointed as the responsible individual, only that he or she have ''the authority for taking required actions to comply with appropriate regulations and requirements.'' The Commission agrees that the person assigned does not need to be on site, nor necessarily an employee of the general licensee, nor, in the case of a specific licensee, the RSO. However, the Commission does not believe that the rule should address non-existent restrictions. The regulations should be concise and allow focus on the words that are most important to understanding the requirement. Further, the distributor in obtaining information about responsible individuals from their customers should be cognizant of the Commission's interpretations and be able to answer questions in this regard. Guidance will also be available to assist with informing general licensees.

Section 31.5(c)(13)—New provision to add an explicit requirement for the general licensee to register devices meeting certain criteria, which specifies the information to be provided and references the fee requirement in § 170.31.

Comment: One commenter stated that once a registration policy and annual fees are implemented for certain general licensees, these licensees should be changed to a new category of specific licensees for these devices. The commenter believed that this would be consistent with other license types that present a potential higher risk and are assessed an annual fee.

Response: The revisions made in this rule are designed to improve control and accountability of generally licensed devices especially for certain devices that are being registered. The devices are designed to be inherently safe to use so that an application process to evaluate the prospective licensee is not necessary. Making these licensees specifically licensed would be a major change in the approach for these licensees and is not considered necessary.

Comment: This commenter also requested clarification as to who is responsible for doing the certifying in § 31.5(c)(13)(iii)(E) and (F) which require ''certification by the responsible representative of the general licensee.'' Specifically, do these paragraphs require this ''certification'' by the licensee's management or the ''responsible individual''? The NRC requires specific licensee's management to review and sign all licensing actions.

Response: In § 31.5(c)(13)(iii)(E) and (F), ''the responsible representative of the general licensee'' is intended to mean the responsible individual as appointed under § 31.5(c)(12). As noted earlier, the Commission believes that it is adequate for there to be an individual assigned the responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. This person is the appropriate person to handle the registration. A second signature, that of a manager, is not required. The general licensee is nonetheless responsible for providing complete and accurate information and not engaging in deliberate misconduct.

Comment: Another commenter brought up the problem of distributors or ''intermediates.'' This commenter stated that beyond the technicality that anyone possessing or storing the device before its final installation is also a general licensee, the focus needs to be on the end user. The use of a ''registration card'' similar to the common warranty card that comes with nearly every appliance should be instituted. The registration card should have the appropriate device, source holder, and source model and serial

numbers pre-printed. The end user need only fill in the facility information and address it to the appropriate agency. The manufacturer continues to report ''distributions,'' the agency cross checks the distributions against end user cards, and follows up with the manufacturer or distributor if all devices leaving the manufacturer are not reported to be installed after some appropriate time.

Response: There is a problem with secondary distributors believing they fall within the intent of the ''intermediate person.'' This is discussed further under § 32.52(a) and (b). The Commission agrees that the focus should be on the end user. The Commission does not currently plan to register general licensees who are intermediate persons, holding devices temporarily at the intended place of use, although the Commission may do so if considerable time passes before the property is taken over by the intended user. Because the registration process is initiated by NRC, there is no need to exempt intermediate persons in the rule to carry out this policy.

The Commission has given consideration to the use of a registration card and decided against requiring this additional documentation at this time. This is discussed further under § 32.51a(a) and (b).

Comment: One commenter, who was against the proposed rule, suggested that if implemented, it could be made less burdensome by adopting a four-year registration requirement instead of an annual registration requirement. He believed that this change would substantially reduce financial and other impacts on stakeholders while, combined with the other reporting requirements contained in the rule (*i.e.*, report of transfer and disposal), meeting NRC accountability needs. This commenter stated that only after experience with this type of rule should the NRC consider a more burdensome requirement.

Another commenter stated that charging fees every four years to lessen the cost of collection sounds good except that the issue is ''contact'' with the general licensee. That commenter noted that the annual registration and fee collection is also the opportunity to ''jog the general licensee'' on ''responsible individual,'' leak testing, inventory, storage limitation, etc., and that it would be easier on the budget to keep the fee relatively constant and ''low''.

Response: The Commission believes that annual contact is important to improving compliance with all of the general licensee requirements and that registration at significantly longer intervals such as four years would not save as much as might be assumed. The fee will be established to recover the cost of the registration program. The general licensees will be able to plan for the fee because it will be required with each annual registration.

Comment: Another commenter was concerned about the requirement in the new § 31.5(c)(13)(ii) that the user will be required to respond to the notification within 30 days. It was suggested that in the first round of notifications, this requirement could cause substantial burden for the manufacturers and distributors. Because there are many general licensees who do not realize the requirement(s) imposed by a general license, these users will likely contact the manufacturers and/or distributor of the device and look for assistance in providing the required information. This commenter also suggested that mailing all of the notifications simultaneously may cause an undue burden on the supplier. This commenter would like NRC to take this into account and provide the extra time required for the first round of registrations.

Response: The existing § 31.5(c)(11) is being used as a basis for requesting the first round of registrations. Both this provision and the specific registration provision give the staff flexibility to adjust the amount of time allowed for licensee response. The Commission is beginning the registration allowing 45 days for response. Once a registration program has been implemented along with the new provisions for improving the upfront disclosure to general licensees, 30 days is considered adequate for response. Too much time can lead to requests being put aside and forgotten. Also, the requests for registration are being spread out over the year for efficiency.

Comment: One commenter believed that the NRC currently has the necessary authority and resources in place to effectively run the program. The effect of the registration is to improve accountability. The commenter noted that all manufacturers currently provide transfer and sales information to the NRC for generally licensed devices within the NRC's authority, and that regulations do not require the reporting of gauges that are sold to specific license holders. The only method the NRC has in place for the tracking of material for specific licensees is through inventories, and reliance on the integrity of the licensee. This commenter believed that the proposed regulations would create a third class of license holders, who would be subject to more restrictive regulations, with less reliance placed on the integrity of the licensee.

Response: The difference between these types of licensees relates to the level of knowledge and training rather than integrity. Generally licensed devices must be designed to be used safely by persons with no radiation protection training. The important aspect of these devices is that they be disposed of properly. Because control and accountability are of primary importance, a different approach to licensing is appropriate. The general licensees are required to do certain things that specific licensees are not; however, the requirements are not more restrictive overall. The general license, even with registration, is simpler than obtaining a specific license.

Comment: Another commenter, although not supporting the creation of a registration program for general licensees at this time, thought that § 31.5(c)(13)(ii) was particularly unnecessary and inappropriate. This commenter believed that the rule should be changed to require the general licensee to register within a specific time period after receipt of the device, regardless of whether contacted by the Commission. See also the comments in response to the first and second of the Commission's specific questions, discussed under section D. below.

Response: The Commission believes that it will be more efficient to contact the general licensees to begin the registration process and provide the information currently in its records for verification and supplementation. Many general licensees would not know about the registration requirement if they were not contacted, others would have difficulty understanding what is required. Also, there would be increased burden on distributors handling requests for assistance from general licensees. If the Commission is unable to contact the general licensees to request registration because of missing information on their identities and addresses, it would also be unable to contact them to inform them of the requirement.

Section 31.5(c)(13)(i)—Criteria for registration.

Comment: One commenter believed that all general licensees should be registered. Another wanted nickel-63 (Ni-63) added to the list of those radioactive elements targeted for registration and tracking because of the expected improvement in the NRC's ability to track their devices once they leave their control. This commenter has been contacted by many customers who have inherited their devices without receiving necessary regulatory information from the previous owners and learn of those requirements only by

chance or when a state regulatory agency representative shows up at the door. This commenter believed that a $420 annual fee is cheap compared to the panic these customers experience. One commenter believed that the physical design of devices to contain the byproduct material should be considered. Another commenter opposed the idea of exempting ''robust'' sources stating that this rule is based on a history of smelted sources, among other concerns and that so-called ''robust'' sources are not smelter-proof. This commenter also stated that if radioactivity is present, the risk is present and some enterprising soul will someday find a way, probably inadvertently, to defeat whatever safety barriers have been put in place.

One commenter thought that it was unclear whether any of the devices (*e.g.*, exit signs, static eliminators, or thickness gauges) potentially used at auto dealerships would be subject to the proposal's registration requirements and that such requirements would be excessive given the nature of these devices and their use.

One commenter wanted to know what criteria will be used to amend § 31.5(c)(13)(i) to add additional devices to the list of devices that require registration and stated that these criteria should be specified so that knee jerk reactions by the NRC to improper management, use or disposal of certain generally licensed devices does not occur.

Response: The Commission does not believe there is adequate justification to make any changes to the criteria for registration at this time. If the Commission considers any changes in the future, consideration will be given to the risks of inappropriate exposure to the public and possible costs for cleanup of incidents involving lost sources. Another factor will be the efficiency and effectiveness of the registration program, based on experience in implementing it.

Comment: At the public meeting of October 1, 1999, one distributor suggested that registration would create a competitive disadvantage where radionuclides included in and those not included in registration are used in competing products (portable gas and aerosol detectors, and X-ray fluorescence analyzers).

Response: The rule is based on the risk of the device not the economic advantage of the types or activities of the radionuclides.

Section 31.5(c)(14)—New requirement for general licensees to notify NRC of address changes.

Comment: One commenter noted that the requirement for reporting changes of addresses does not provide for the exemption from reporting if the device is transferred to the specific licensee to obtain a replacement device from the same specific licensee as previously described in § 31.5(c)(8)(ii). The commenter raised the question that if a replacement is purchased from the specific licensee, shouldn't the same provision be made in § 31.5(c)(14).

Response: This provision is for address changes and is separate from any reporting of device transfers. The replacement process as a designator of when to report has been removed. A change of address can occur either from the movement of a general licensee's business to another location or the changing of a company name or building identification such that only the mailing address itself changes.

Section 31.5(c)(15)—Proposed revision to limit to 2 years the amount of time a general licensee can keep an unused device in storage and allow the deferment of testing during the period of storage.

Comment: Many commenters did not agree with the 2-year storage limit. This seemed to be the issue of most concern for the general licensees who commented. One commenter asked the Commission to extend the storage of devices to 3 years, stating that this would allow customers to maintain a spare probe. The spare probe would be on the same schedule for leak testing and would ensure that the probe was accounted for. Another recommended that the permitted storage time period be changed to 5 years. This commenter did not agree that ''general licensees are unlikely to keep a device unused for more than 2 years.'' The commenter believed that the imposition of a 2-year limit on storage would be a hardship for the university research community. The commenter pointed out that it is often the nature of scientific research in a university setting for radioactive devices to be used intermittently. For instance, funding of grants to conduct research utilizing generally licensed devices is sometimes not forthcoming and a device may need to be stored until the project is again funded. The commenter gave as an example of a common laboratory device, the liquid scintillation counter, and suggested that the proposed rule might require disposal of this expensive piece of lab equipment, which would almost certainly be used at a future time.

Another commenter stated that it is not uncommon for these devices to be stored for periods exceeding 2 years and then be put back into use for special projects and noted that the Safe Drinking Water Act specifies testing for contaminants on 3- and 9-year intervals. The commenter also stated that while some devices may be in use during this timeframe, other devices may be in storage for use during the peak demand time. In addition, a device needing foil replacement may be kept on hand to minimize down time. The device is eventually shipped out for foil replacement while another device is kept in service. In addition, other devices currently unaccounted for may have found their way to other general licensees capable of caring properly for them. The commenter thought that owners of these devices, when faced with a 2-year maximum storage time, may be reluctant to admit the presence of all of the devices on the premises, in particular, any devices they may have acquired without authorization. In such cases, the 2-year maximum holding time may actually run contrary to the purpose of the proposed rule and encourage some to withhold disclosing the presence of these devices or improperly dispose of the devices. The commenter stated that accounting for all of the devices is far more important than time restrictions on device storage and suggested NRC consider eliminating the time restrictions on storage of devices or alternately, consider exempting devices with replaceable isotopes from the time-based storage rule.

Another commenter urged the Commission to limit the 2-year storage provision to nuclear sources that have been removed from service and are either awaiting transfer back to a specific licensee for disposal or have been temporarily removed from service. The commenter provided these two reasons: (1) Because NRC's proposal would provide for procedures to assure that sources (including those kept in storage) would be properly managed, there is no compelling reason to limit storage time for unused sources to 2 years; and (2) Some sealed nuclear gauges are essential spare parts for production processes. The commenter gave the example of a gauge to control the level of material inside a chemical reactor, saying that in several instances, there is no feasible alternative to a nuclear gauge measuring device. If the level gauge fails, the equipment must be shut down until the gauge is replaced. In this case, it is essential to have an onsite spare. It would be excessively restrictive if the 2-year storage requirement were to apply to this situation. A facility would be forced to recycle a new, unused gauge and

purchase a new one merely because an arbitrary time limit had passed.

One commenter also stated that the requirement that a general licensee not hold devices that are not in use for longer than 2 years would prove burdensome. Generally licensed devices may be placed in storage and not be used for a period of more than 2 years. The owner may intend to use the device at a later date. This proposed rule would preclude this activity and would require the general licensee to dispose and repurchase the generally licensed device.

Another commenter questioned the short time period of 2 years as the life expectancy of their devices is in the decades, and different product life expectancies vary depending on equipment type and half-life of the radioactive materials in them.

Another commenter noted that a general licensee who receives a copy of these regulations after the final rule will not have the comments as outlined on 64 FR 40299 to guide him as to what must be done with a device after 2 years of storage. This commenter suggested that, for clarity, the regulation should state possible actions such as: (a) Disposal of device via an authorized licensee; (b) Send the device back to the supplier (or authorized licensee) for interim storage (The supplier may not want to provide this service and/or almost certainly will impose a storage charge); or (c) Request an exemption from this paragraph from the NRC (will a ''timely request'' prevent enforcement action until the request is acted upon?). This commenter pointed out that it possesses several gas chromatographs with generally licensed Ni-63 electron capture sources which have not been used for more than 2 years. However, research interests change and the units may be used again.

One commenter suggested that any rule provision that does not directly affect the accountability issue be deleted. This commenter stated that additional requirements on labeling, length of storage, or the information supplied to the customer will have little or no effect on the accountability of the radioactive material. This commenter believed that these rules place an arbitrary limit on the storage of devices not in service. They requested that NRC provide clarification for devices that may be out of service but are planned to be reused at a future date that could be several years. They stated that, in addition, for some critical applications, a spare device might be kept in storage for years. It is also possible for a general licensee to possess a device that is kept in secure storage because there is no path for disposal or transfer. Americium-241 (Am-241) is an example of what would be orphaned waste. This commenter also stated that the portions of this rule that require a responsible individual and reporting will be sufficient to ensure accountability of sources in storage.

Another commenter suggested that a note be added that devices containing only krypton need not be tested for leakage.

One commenter stated that devices in storage should still be required to be subject to six month physical inventory requirements.

Another commenter supported the proposed requirement to limit the period during which a device may be stored and unused to 2 years and agreed that when a device is not used for a prolonged period of time, it is susceptible to neglect and improper disposal. This commenter believed that the provision would compel licensees to decide whether to use, return, or properly dispose of their sources, and would hold licensees accountable for their decisions.

Response: The Commission had not anticipated the level of difficulty this provision might cause and the number of instances that devices are currently held in storage purposefully for future use rather than simply being taken off line and put aside rather than being properly disposed. In the proposed rule notice, it was noted that there are options if one did want to keep a device which is likely to be used again. It noted specifically that the device could be returned to the supplier to be held under the distributor's specific license until later use, or the general licensee could request an exemption from § 31.5(c)(15) indicating the reason(s) why the licensee intends to use the device after 2 years and prefers to keep it on site in the interim. However, if this is as common a practice as indicated in the comments, use of these options alone would be burdensome. The final rule has been revised to allow for standby for future use. To address the fact that devices not in use can quickly be forgotten and lost track of, this provision requires quarterly inventory of devices in standby. This provision does not relieve these general licensees from the registration requirement or the requirement to pay a registration fee.

Comment: A commenter indicated that they would prefer to see customers required to maintain the current wipe test frequency during storage as this keeps the customer knowledgeable of the device's ownership and location. This commenter suggested that, if the Commission does allow a 2-year exemption of testing during storage, the NRC should build upon the proposal and require that a wipe test be performed at the time of removal from storage by an authorized organization, forbidding installation or use of the device until acceptable results are obtained.

Response: The provision does require testing for leakage (wipe test) before use or transfer, if the normal schedule for testing has been exceeded. Paragraph 31.5(c)(5) indicates that a device may not be used if contamination is detected (0.005 microcuries (185 bequerels) or more removable contamination). These two provisions together do what was suggested.

Comment: Another commenter noted that persons holding generally licensed devices that have been in storage for more than 2 years will be in immediate noncompliance if this rule is implemented in its present form. This commenter stated that public safety will be better served if general licensees are given a reasonable amount of time after implementation of this rule to properly dispose of devices. If the storage provisions become effective 2 years after the passage of the rule, general licensees with material currently in storage will have the same amount of time as general licensees with newly acquired devices to arrange for proper disposition of the devices.

Response: The Commission interprets this provision such that the time before the effective date does not count towards the 2-year limit. However, if the general licensee considers a device in standby for future use, he is to begin conducting quarterly inventories as of the effective date of the rule.

Comment: One commenter noted that some devices, specifically static eliminators, are distributed without serial numbers, and that makes them difficult to inventory, and thus it would be very difficult for the responsible individual to determine when such a device has been held in storage for longer than 2 years. This commenter believes that the additional regulatory burden required by the proposed rule is not warranted in light of the following: Typically, the devices employed by the pharmaceutical industries, as with many other industries, are those which present a lower risk. These devices are sealed sources which are designed to be inherently safe with regard to radiation safety. Therefore, to require a general licensee to inventory and assure that devices are not stored for more than 2 years poses an undue regulatory burden.

Response: The labeling requirements of § 32.51(a)(3) require inclusion of a serial number. This requirement is a

Compatibility Category B (*i.e.*, Agreement State regulations must be essentially identical). Thus, all distributors should be labeling devices distributed for use under § 31.5 or comparable Agreement State regulations with a serial number. If this is not the case, there is noncompliance on the part of the distributor, or possibly inconsistency in some Agreement State regulations. The Commission will address this through inspection and enforcement of the labeling requirement. Note also, most static eliminators contain polonium-210 (Po-210), which is relatively short-lived and would not be kept in storage for long except when awaiting disposal.

Section 170.31—Proposed revision would have added a $420 registration fee for general licensees subject to § 31.5(c)(13). The fee is not being finalized at this time because it is anticipated that the first registrations subject to the fee will not be filed until FY 2002. The final fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and the number of registrants. Based on current budgeted costs, FTE rate, and the estimated number of registrants, the fee is expected to be approximately $440–$450.

Comment: Two commenters objected to registration of exit signs, stating that most people would replace them with nonradioactive alternatives rather than pay a fee. One of these commenters also suggested that there are alternatives for thickness gauges, gas chromatographs, level detectors, etc., and that a fee charged over a ten-year life could significantly affect life cycle cost analysis. This commenter believed that significant numbers of people will go to nonradioactive alternatives, reducing the number of people to collect fees from, leading to higher fees, and further reduction in use of products, and suggested that fees for smoke detectors would increase the numbers to divide costs among.

Response: Exit signs are not included in the registration requirement. Neither are some of the devices of the other types mentioned. The fee will be established in the FY 2001 notice and comment fee rulemaking to recover the costs for the registration program for the devices covered by the registration requirement. It would not be appropriate to extend the registration requirement to other devices for the sole purpose of potentially reducing the fee for each registrant. For at least most of the devices subject to registration, the Commission believes that the amount of the registration fee will not create a significant effect on the market for these devices.

Comment: One commenter noted that NRC has always had in the rule the requirement and ability to maintain accountability of general license devices via the manufacturer's required general license distribution reports. This commenter stated that it is unclear as to the rationale of an annual $420 fee and suggested that this be an initial start up fee and that further evaluation for maintenance/inspection fees be conducted after the program has been in place for a few years.

Another commenter believes the proposed $420 annual fee to be a modest and reasonable fee for all licensees, including small businesses. This commenter asserted that the current regulatory regime has shifted the costs of lax accountability and control onto steel makers, insurers, and the taxpayers and noted that general licensees do not pay directly for their licenses. The cost has instead fallen on steel producers to detect the sources, on the steel producers and taxpayers to arrange for proper disposal, and on steel producers and their insurers to pay the cost when a source is inadvertently melted. The cost has also fallen on the general public, in the form of increased risk to health and safety from unanticipated exposure to dangerous levels of radioactivity. This commenter believes that general licensees, who benefit economically from the manufacture, sale and/or use of radioactive devices, should be required to shoulder their fair share of this burden to protect the public and that an annual fee in the neighborhood of $420 is not only equitable, but entirely reasonable.

Response: The Commission believes that it is appropriate to increase its efforts to improve compliance of general licensees specifically in the area of accountability, that this can be done through more regular contact with licensees, and that an annual registration process is an efficient way to do this. Charging the general licensees a registration fee to cover the cost of this process, including needed followup, is a matter of equity. The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), to recover approximately 100 percent of its budget through fees. The registration fees will recover the cost of the general license program associated with this group of general licensees in an equitable way, as required by law. Those who are allowed to use devices under the general license would now bear the operational cost of the program instead of those who hold specific licenses. In accordance with the Chief Financial Offices Act of 1990, the NRC conducts a biennial review of part 170 fees and revises those fees as necessary to reflect costs in providing the services. Thus, the fees will be revised to reflect any changes that occur in the program.

There were no comments other than minor editorial suggestions on §§ 31.5(b) and 31.5(c)(5).

There was no comment on §§ 170.2, 170.3, 171.5, and 171.16.

Requirements for Distributors

Section 32.51(a)(4) and (5)—Adds requirement for an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration.

Section 32.51a(c)—Proposed revision to make labeling requirements a condition of license 1 year after effective date of rule. Redesignated § 32.51a(d) in the final rule.

Comment: Two commenters recommended that the wording in proposed § 32.51(a)(4) be changed to replace the word ''permanent'' with the word ''durable.'' These commenters stated that distributors of these devices must be able to remove the labeling as required by § 20.1904(b). If ''permanent'' markings are truly added, this will not be possible. Similarly, another commenter noted that all containers or devices are required to be labeled now by § 20.1904(a). This commenter believed that the wording that refers to ''permanent'', ''embossed'' or ''engraved'' will result in confusion. This commenter stated that many components that would be shipped as part of the manufacturing process would be labeled and contain no radioactive material and that any label must be removable to meet the requirements of § 20.1904(b). This commenter also stated that additional requirements on labeling, length of storage, or the information supplied to the customer will have little or no effect on the accountability of the radioactive material and suggested that any rulemaking that does not directly affect the accountability issue be deleted. Also, these commenters believed that additional rulemaking on labeling is unnecessary and should be considered part of the device registration.

One commenter supported the requirement of additional labeling on any separable source housing. This commenter stated that steel companies have received, on several occasions, improperly discarded sources and source housings on which the label has been removed. A marking of the serial number on the source housing would

alert NRC and the public to the existence of the missing source. This commenter also supported the requirement that labels be embossed, etched, stamped, or engraved on the devices for the reasons NRC listed in its proposal. This commenter believed that permanent labeling would help alleviate the problem of removed labels and that it would also help to prove criminally improper disposal, as the effort and deliberation required to remove such labeling would indicate the willfulness of the offense.

Response: The rule requires that the label itself be ''permanent'' and that it be affixed to the device. Labels on all devices must be durable. The intent of this provision is to apply a higher standard of durability for these ''higher risk'' devices. The Commission recognizes that labels on devices must be removable. Labels should be securely affixed to the device, tamper resistant, but able to be removed, defaced, or otherwise marked to indicate no radioactive material to meet requirements in § 20.1904(b). In many cases, the current designs will satisfy the new labeling requirements. The Commission believes that is appropriate to include these additional details concerning labeling in the regulation to ensure consistency and that proper labeling does contribute to accountability. No change has been made to the proposed rule changes to the labeling requirements.

Section 32.51a(a) and (b)—Revision to amend the requirements pertaining to the information distributors must provide to the general licensee. Distributors are now required to provide general licensees with a copy of § 31.5 before transfer rather than at the time of transfer. The distributor is also required to provide copies of additional applicable sections of the regulations, and other information.

Comment: The majority of those commenting on this issue were in favor of ensuring that general licensees are better informed of regulatory requirements, etc. Three of the distributors, however, claimed that the requirement to provide information to their customers was unnecessary or would not affect accountability. A few thought that having the information provided in the package is more effective as it would likely get to the person actually using the device. However, another thought that when information is included with other documentation accompanying the device, that often the ''responsible individual'' does not receive it. One of the general licensees who commented claimed that no information had been provided when the company had purchased exit signs. An Agreement State noted the importance of the general licensees being informed specifically about any regulatory fees that will be required and that doing so would lead to better cooperation and reduce the potential for unauthorized transfer of devices.

One commenter argued that making a requirement for the distributor of the generally licensed device to provide applicable regulations to the general licensee is insufficient. If the regulations are part of a large packet of information they are too easily overlooked. Also, if the individual is unfamiliar with regulations, the significance of the information may not be understood.

Response: Although the new provision cannot completely resolve the difficulties of ensuring that the general licensees, and the appropriate persons within the general licensees' organization, are fully aware of all regulatory requirements, the Commission believes that the requirement for providing the primary applicable regulations and additional information to customers prior to sale, together with the requirement for general licensees to appoint a ''responsible individual'' should significantly improve general licensee awareness of and ultimately compliance with regulatory requirements.

Comment: A State commented that the information provided to recipients of the generally licensed devices should also include a Safety Analysis Summary (SAS) for each generally licensed device transferred. The SAS should provide information that would be useful to regulating agencies and end users during normal use and accident conditions. The commenter noted that the NRC recognizes the fact that general licensees have no radiation background and, therefore, the NRC should recognize that general licensees would not be able to answer any questions raised by the employees about the hazards associated with routine use of the device or working in the area of such a device. Additionally, the general licensee would not know how to deal with incidents involving their device. This State believed that a well thought-out SAS should provide general recommendations that should be taken to reduce contamination and unnecessary radiation exposure in dealing with incidents, and that this information could be used by the general licensee in a manner similar to Material Safety Data Sheets, used routinely by many industrial facilities.

Response: The general license is based on the standard that the device can be used safely by someone without radiation protection training. Distributors are required to provide instructions and precautions necessary to assure safe installation, operation, and servicing of a device on the label or in operating and service manuals referenced on the label. Paragraph 31.5(c)(5), which is included in the information that the distributor must also provide to general licensees, requires the general licensee, in the event of a failure or damage to a device, to suspend operation of the device until it has been repaired by or disposed of by transfer to a specific licensee authorized to do so. This paragraph requires the general licensee to report the event to the Commission. If the event is likely to have resulted in contamination of the premises or environs, the revised § 31.5(c)(5) also requires the general licensee to submit a plan for ensuring that the premises and environs are acceptable for unrestricted use. In the unusual event of damage to a device involving significant contamination of the premises and/or environs, the general licensee should consult with the distributor or other person with the appropriate training in radiation protection. Therefore, beyond the requirements discussed here, the Commission does not believe additional instructions are needed.

Comment: One commenter was concerned that companies selling devices sell to the individual researcher or department within the institution and the institution is oftentimes unaware that the device is in its possession. The commenter claimed that only one of its six vendors routinely notifies the institution when a new source is transferred.

Response: It is the responsibility of the licensed organization to communicate appropriately within house. Information provided before purchase on the requirement for a ''responsible individual'' should lead to some improvement in this area. It is not the distributor's responsibility to ensure that all appropriate persons within the general licensee's organization are informed.

Comment: There was particular concern about the proposed requirement to provide information on options for disposal and estimated costs of disposal. The primary reason stated was that disposal availability and costs for disposal change continually and any estimated costs are likely to be meaningless at the actual time of disposal. This is considered particularly problematic for devices with useful lifetimes of 30 or more years, and for devices containing Am-241 because

there is no viable disposal option. One commenter stated that the information would likely be wrong and misleading. It was also pointed out that disposal costs are not required to be given to a specific licensee.

Response: The commenters are correct in that the costs of disposal may change dramatically between purchase and ultimate disposal, particularly for devices with long lifetimes. The distributor can only provide current information and indicate that it could change considerably by the time of disposal. The Commission believes that this amount of information should be made available to the purchaser in spite of the uncertainties in the ultimate cost of disposal. Some information about the situation needs to be provided even in the case of Am-241. In some cases, the distributor can agree to take back devices. Customers should be able to assume that there is always some uncertainty whether they will be around to fulfill that promise.

Comment: There were questions concerning how compliance with the requirement can be shown and specifically whether there would have to be written proof to demonstrate that each customer has been informed. One of the distributors recommended that a validation form be sent along with § 31.5 to end users purchasing devices, requiring the user to sign the form indicating they had received, read, understood, and would comply with the regulation(s) provided, because people have a much greater tendency to read and comply with something if they must put their signature to it. Another option suggested was for the distributor to provide a registration type card, similar to warranty registration cards, that would be sent to the regulator rather than the distributor.

Response: Although some distributors may find a system using a validation card effective in communicating with their customers, the Commission believes requiring this extra documentation for all distributors may not be justified and that some would find this burdensome. Which method of providing disclosure information is most efficient and effective is likely to vary amongst different businesses. If a particular distributor finds that it is appropriate for their organization to get a signed card back from its customers to ensure compliance, they may chose to do this. The Commission will not require written proof to verify that each customer has received the required information before deciding to purchase a device. NRC inspectors have a variety of means at their disposal for determining compliance, including reviews of the written material that the distributor provides to the general licensee, conducting interviews with the distributor's staff, and sampling the distributor's customers if necessary.

On the option of a registration type card provided by the distributor and sent by the general licensee to the regulator, the Commission believes at this time that this will not be cost effective. There could be considerable cost resulting from reconciliation of quarterly transfer report information with the cards received from general licensees and followup when general licensees fail to send in the card.

Comment: A few commenters were concerned over the amount of paperwork ''thrown at a proposed customer.'' One suggested that § 31.5 is critical for review before the sale, but that additional information could be provided with the product at time of delivery. It was suggested that the distributor may be better able to accomplish the communication of necessary information, if they could indicate that further regulatory requirements are specified with the delivery of the product. The exit sign distributors, although suggesting that exit signs be removed from § 31.5 and put into a separate provision, were concerned that their customers found it particularly difficult to understand the regulations. At the public meeting on October 1, 1999, they pointed out specifically that some of the provisions in § 31.5 do not apply, and even the title of the section doesn't include reference to that type of device.

Response: A few changes have been made in the final rule to help reduce confusion on the part of exit sign users, as well as address others' concerns about the amount of information to be provided prior to sale. The title of § 31.5 has been changed to be more inclusive of all the devices covered. It may have been an added cause of confusion that exit signs did not fall into the shorter title. The provisions to provide copies of § 31.5 or, in the case of Agreement State customers, comparable Agreement State regulations, have been changed to allow specific paragraphs not applicable to a particular device to be omitted. Also, a provision (§ 32.51a(c)) has been added that would provide some flexibility to distributors for properly informing their customers. Distributors would have to receive Commission approval before using a substitute to the prescribed information. One might, as suggested, provide a more simply stated summary of regulatory requirements in sales information and provide actual copies of regulations at transfer.

In addition, the Commission staff has added another pamphlet designed as guidance specifically for self-luminous exit sign users as Appendix L to the final version of NUREG–1556, Vol. 16, ''Consolidated Guidance about Material Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees,'' to be published shortly. It may be used by NRC, the Agreement States, or the distributors of exit signs as information for users.

Comment: One commenter questioned the value of indicating a person's name instead of the title ''Director'' for a contact at an Agreement State regulatory agency. The commenter indicated that at least one of the Agreement States had asked that the state director's name not be used in quarterly reports and suggested that the same information be provided to customers.

Response: In § 32.51a(b), the title has been added as an alternate to the name of an individual as a contact at an Agreement State regulatory agency. A particular agency may prefer the use of a title in lieu of an individual's name whose position may change.

Comment: There were three issues that commenters wanted clarified: (1) The fact that the specific sections of the regulations included in the information to be provided does not match the applicable requirements mentioned in § 31.2; (2) how the services that can only be performed by a specific licensee are determined; and (3) the alternative of providing NRC's regulations to customers in Agreement States is not as clear in the proposed text as in the existing rule.

Response: On the first of these issues, the portions of the regulations which must be provided to customers are those considered most important for the general licensees to be aware of. The required sections are not all inclusive of sections of the regulations that may apply. However, §§ 31.2 and 31.5(c)(10) make reference to the other applicable regulations.

On the second issue, § 32.51 requires an applicant for a license to distribute devices for use under § 31.5 to provide information about labeling, including instructions and precautions to assure safe use and installation, operation and servicing of the device. It also requires the applicant to propose whether the general licensee can perform certain testing procedures. This application process is where the details of which activities can be performed by the general licensee or must be performed by a specific licensee are determined for a particular device. The Commission believes it is easier to specify what services only the specific licensee can

perform, rather than what the general licensee is allowed to do.

On the third issue, the Commission believes these options are clear but further clarifying language has been added.

Section 32.52(a) and (b)—Proposed revision to add the following information to the existing quarterly transfer reporting requirement: the serial number and model number of the device; the date of transfer; indication if device is a replacement, and if so, the type, model number, and serial number of the one returned; name and license number of reporting company; and the specific reporting period. Also, the general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements replaces the name and/or position of a simple contact between the Commission and the general licensee. Also, a form (NRC Form 653) will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information.

Comment: The distributors who commented were concerned about the difficulty of identifying a replacement device. They noted that the replaced device may be returned long after obtaining another. If the distributors were required to include the information pertaining to the replaced device in the transfer report, in anticipation of its return, the replaced device would be deleted from NRC's database, although it may never be returned. They claimed that adding the tracking of which device replaces another device to their recordkeeping would be burdensome. One of the Agreement States had a similar comment and suggested that the report include information on the device returned regardless of whether or not it was replaced.

Response: The Commission agrees that identifying when a device replaces another and reporting the receipt and transfer of both devices in the same quarterly report is impractical. The final rule has been changed to remove the replacement process as a determinant for which transfers (by general licensees) or receipts (by distributors) must be reported. The final rule requires the distributors to include information on all devices received from general licensees. ''Indication if device is a replacement, and if so, the type, model number, and serial number of the one returned,'' is replaced by, ''For devices received from a general licensee, * * * the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.''

Comment: One commenter was concerned that there was no definition of the term ''intermediate person'' defined in any of the regulations. He understood that intermediate persons referred to general licensees who receive a radioactive device but are not the ultimate user and that it does not refer to holders of materials licenses to receive and redistribute general license devices.

Response: The commenter is correct in this interpretation. Some distributors and redistributors apparently have misinterpreted this requirement in the past. The Commission believes that the new wording of §§ 31.5(c)(9), 32.51a and 32.52 should help to clarify this issue; therefore, a definition is not needed. Redistribution is not allowed under the general license, except that an intermediate person may possess the devices at their intended place of use. However, a warehouseman may be exempt from licensing under § 30.13 to the extent that they temporarily store a device being transferred to a general licensee known to the initial distributor. This exemption would not allow a warehouseman to stock devices for future sale.

Comment: One commenter said that the distributors should be told that the institution is the general licensee and not the individual researcher or department within the institution.

Response: In the case of universities, the general license is provided to the educational institution, an individual working for a university is not a general licensee. Thus, the distributor should not list an individual researcher as the general licensee.

Comment: An Agreement State said that the report should specify the type, model, and serial numbers of the device, source holder, and source, as appropriate, noting that many devices have multiple (different) serial numbers used to identify the various components. The concern was that any of these numbers could be reported by themselves at different times leading to mis-identification of transfers, returns, and deliveries. They concluded that all numbers associated with a device should be reported.

Response: Each device should have a device serial number. As noted, devices may have multiple sources and some have their sources changed routinely. This rule is intended to allow the Commission to keep track of individual devices distributed in the future, and those already in use that are subject to registration. Although a separate source housing will be required to have a source serial number, the Commission believes that the extra reporting necessary to keep track of all source serial numbers is not cost effective at this time. There would be many source replacements to report. In the unusual event of finding an intact source outside of the device, the source could usually be traced back to the general licensee through the distributor. Also, sources that are readily separable from the device for replacement purposes, often contain short-lived nuclides which present relatively low risks.

Comment: One commenter made the following statements concerning reporting the specific location of use rather than the mailing address of location of use, or identifying the precise physical location: ''This is 'nice to have' information if the agency intends to routinely inspect the facility. We believe the burden of locating the device should fall on the general license. If the general licensee cannot locate a device in a timely manner, it should be presumed 'lost' and the appropriate fine would be in order.''

Response: The Commission agrees. The distributor may have difficulty obtaining this information. The device could later be moved, in which case, the information the NRC has would become incorrect. Having to report moves within building(s) at the same address would not be justified. The mailing address for location of use continues to be the only required information on the location of use. An exception to that, however, has been added only if the address reported is not directly associated with the location of use, because there is no mailing address for the location of use, such as on a pipeline.

Comment: One of the distributors at the public meeting pointed out that sometimes labels are changed on a device making information the Commission has incorrect. This can happen in a source changeout if the radionuclide or activity is different (not just because of decay) and in the case where the distributor uses the same serial number for the device and source. The question was raised as to whether the distributor should report these changes. It was also noted that, on occasion, the change of a source could even change whether registration is required.

Response: The Commission agrees that the distributors should report any changes to the device to accurately maintain accountability of the device. Only service providers, who are specifically licensed to change the information on the label which is required under § 32.51, are allowed to do so. The service providers should report these changes to the NRC or Agreement State. The final rule has been changed to require this of § 32.51 licensees. This information will include the old and new information regarding the device. However, many service providers are not distributors licensed under § 32.51, and licensing action will be necessary to get all changes reported.

Comment: One of the distributors urged the NRC to move quickly toward allowing electronic submission of quarterly reports.

Response: The Commission is exploring a means for the quarterly report data to be submitted electronically.

Section 32.52(c)—Proposed revision was to add to the recordkeeping requirements, information on final disposition of devices and significantly extend the retention period for recordkeeping concerning transfers.

Comment: One of the distributors thought that extension of recordkeeping was unnecessary, because the same information would be submitted in quarterly transfer reports. This commenter also asserted that maintaining the records would not be as simple as assumed by the Commission, stating that long term retention of records to meet a regulatory requirement requires more rigorous systems, procedures, and training than are necessary to meet normal business needs and involves commensurately greater time and costs.

Response: Under the proposed rule, long term retention would have been required of all the information required in the reports and additional information on final disposition of returned devices. As the final rule requires information to be reported on all devices received, there is no need for long term retention of records or for specifying information on final disposition of returned devices. Instead, the retention period is reduced from 5 years after the reported event to 3 years after the reported event. Three years should be adequate to cover the time from the transfer through the time reported, time for NRC to record the information, and time for NRC to verify and correct any inconsistencies or obtain clarification from the distributors. The rule also revises the content of recordkeeping requirements by specifying that information supporting the revised reports needs to be retained.

There were no comments on § 32.51a(d), which was redesignated § 32.51a(e) in the final rule.

C. Comments on Compatibility Category for Agreement States

Comment: Most of the distributors who commented presented considerable argument that Compatibility Category C was not appropriate because of significant direct transboundary implications. They strongly urged that §§ 31.5 and 31.6, be made Compatibility Category B. One commenter suggested that Category A might be appropriate saying that the loss or non-accountability of radioactive material is a serious matter that is contrary to the basic principles of radiation safety. Two of the commenters stated that the time radiation safety personnel spend attempting to comply with any Agreement States' unique versions of §§ 31.5 and 31.6 is directly at the expense of efforts that are meaningful to product safety, training, following up with customers who have not returned devices, etc. One commenter concluded that consistency in the regulations significantly improves the chance of compliance by both the end user and the distributor, thereby increasing safety.

These distributors presented a number of arguments for consistent regulations, noting that a few States have required specific licensing for these devices. One commenter stated that Agreement States are in essence voiding other Agreement States sealed source and device registry reviews and technical positions. Many complained about the difficulty of staying current on all jurisdictions' regulations. There is no mechanism in place for someone who is not a licensee in a particular state to be made aware of any changes of staff and rules.

The case of a recent rulemaking by the State of New York was discussed. Under the regulations that are New York's current version of § 31.5, certain devices (gamma gauges, Sr-90, transuranics) may no longer be possessed under a general license within the State of New York. This change affects customers in New York who have been required to apply for and obtain specific licenses for these gauges. Distributors are affected in terms of providing additional customer support for licensing, assuring shipments don't occur before specific license verification, and added recordkeeping. In addition, there is another seemingly unintended, but real consequence of permitting different Agreement State versions of § 31.5. In non-Agreement States, distributors and other servicers provide gauge service to end users under § 31.6. This permits work under the detailed terms of their specific license for gauge service, issued by an Agreement State, without needing to apply for a specific license from NRC and without being required to work under the reciprocity provision in 10 CFR 150.20. Like most other Agreement States, New York regulations contain a provision similar to § 31.6; however, with New York's new version of § 31.5, their regulation comparable to § 31.6 no longer authorizes distributors or servicers licensed by NRC or other Agreement States to provide installation or on-going service to New York end users of some gauges. New York's version of reciprocity requires filing for permission a minimum of 7 days in advance of the activity and is limited to 30 days of work per calendar year. Because there are distributors' employees who live and report to work on a daily basis at end-user sites in New York State, these reciprocity provisions are too restrictive to be useful on an ongoing basis. As a result, some of the distributors and other servicers will be required, in order to continue to offer service to all customers, to apply for a specific license from the State of New York, even though they already have specific licenses issued by NRC or Agreement States that were designed to regulate their installation and service activities throughout the country. If § 31.5 is designated Category C compatibility and other Agreement States eliminate the general license for certain gauges, those states and the out-of-state service providers working within those states will be involved in the time-consuming process of negotiating new specific licenses (in duplication of existing licenses).

Response: The Commission agrees that there are significant transboundary implications of these regulations. The compatibility requirements for §§ 31.5 and 31.6 are being made a Category B. After the Agreement States make the required changes to their regulations (in about three years), the distributors' and other servicers' problems with reciprocity for servicing will be eliminated. There will be limited possible changes in various regulations for distributors to keep up with, such as fee amounts. Although Part 170 provisions are not amongst the regulations which must be provided to customers, it is expected that distributors will be asked and will inform customers on the amount of fees.

In implementing the Agreement State Program through the regulations in 10

CFR part 150 in 1962, the Commission (then AEC) stated: ''The Commission's decision not to exercise its authority to license the transfer of products containing atomic energy materials (other than products designed for distribution to the general public) is based on the assumption that agreement States will maintain continuing compatibility between their programs and Commission programs; and that procedures will be devised assuring reasonable, reciprocal recognition of licenses and licensing requirements among such States and the Commission.'' This will unfortunately require a number of Agreement States to revise existing registration programs; however, the Commission believes consistency of regulations in this area is very important to improve the effectiveness of the general license program.

Comment: One Agreement State thought that the supplementary information was unclear on how general licensees in Agreement States must demonstrate that they can account for devices and are knowledgeable of the applicable requirements; specifically, that it did not say if NRC intends to request that Agreement States keep track of general licensees and individual devices. Because establishing a tracking system is a significant undertaking, they recommended that NRC clarify its expectations of the Agreement States.

Response: For there to be complete accountability for devices and the ability to trace orphaned devices to responsible parties, tracking by all jurisdictions will be necessary. If NRC were to develop a National Database in the future, Agreement States would have to provide detailed data for general licensees and devices in their jurisdictions. In addition, with all reporting requirements necessary for keeping track of individual devices being Compatibility Category B, the necessary information will be required to be provided by all licensees in the future. It is expected that if a jurisdiction requires information to be reported, it would keep and make use of that information.

Other Comments Concerning Transboundary Activities

Comment: One commenter recommended that supplementary information for the final rulemaking explicitly describe the conditions under which an Agreement State licensee would be allowed to use a portable generally licensed device in an area of NRC jurisdiction.

Response: Although there is no reciprocity for general licenses, the general license in § 31.5 applies automatically without application for license or other permission as long as the device has been manufactured or distributed by an appropriate specific licensee and obtained in an authorized manner. The user of a portable device in NRC jurisdiction would be using the authority of § 31.5 and would be subject to NRC regulation. However, the NRC would not require registration of a device used in NRC jurisdiction by a company located in another jurisdiction, as the registration is based on the address of the primary place of storage. The NRC would be relying on the Agreement State to have appropriate controls in place under equivalent regulations to ensure accountability for the device. An additional provision has been added to § 31.5(c)(13) to specifically exclude from the registration requirement Agreement State general licensees using a device temporarily in NRC jurisdiction. This provision limits the time this exclusion is applicable to less than 180 days in any calendar year. This is consistent with the reciprocity provision for specific licensees in § 150.20 and is intended to avoid, for example, the situation of a general licensee purposefully storing a device normally used in NRC jurisdiction in another jurisdiction to avoid NRC registration.

Comment: There was comment on whether portable and ''mobile fixed'' gauges should be allowed under a general license. An Agreement State commenter stated that there are obvious transboundary implication to this practice and reciprocal recognition of the general license is not provided (and should not be). Another Agreement State supported limiting portable and ''mobile fixed'' gauges to specific license only.

Response: The Commission believes that it is reasonable for each jurisdiction to allow the use of portable or ''mobile fixed'' devices under a general license within its jurisdiction that are being regulated by another jurisdiction. This should be particularly true with the regulations in § 31.5 a Compatibility Category B. Each jurisdiction relies on the others in approving devices for use under a general license.

Timing of Adoption of Requirement for Augmented Material Transfer Reports

Comment: The three Agreement States that commented all opposed an accelerated implementation by the Agreement States, favoring the normal three years. However, one referred only to the difficulty of having all of the States revise their regulations. Another discussed the difficulty of developing an infrastructure (a state registration program) which may not already exist. This commenter did indicate that, if necessary, they could apply appropriate license conditions for their several distributors.

Response: The proposal for accelerated adoption of the Agreement States was only for updating distributors' material transfer reporting requirements. It is assumed that this would likely be done by applying license conditions, if required to do so quickly. The States would still have the normal three years to implement a registration program and to make changes to their regulations. The Commission would like to start getting the additional information from all jurisdictions as soon as possible. Because the new reporting requirements include all the necessary information that was required previously, it will not be a problem for States to start receiving the augmented material transfer reports before revising their rules or implementing a registration program. The Commission is requiring that the Agreement States require their distributors to make their material transfer reports consistent with this rule 6 months after the effective date of this rule.

D. Comments on Specific Questions Posed

1. The Commission seeks comment on whether the registration requirement should include a provision that would require the general licensee to complete registration by a certain time, whether or not the NRC requests registration.

Comment: There were about equal responses for and against such a provision. A non-Agreement State wanted registration to be completed in 30 days after receipt. One commenter noted that general licensees will have difficulty knowing whether the registration requirement applies to them. They stated that it would be inappropriate to cause general licensees to attempt to register unnecessarily and that registration should be a response to an NRC or Agreement State directive based on agency assessment of the devices received. Another argument against was that if an entity is unaware that a device should be registered because they have not been notified by a manufacturer, distributor, NRC or Agreement State, it would be unfair to impose a penalty on them. One of those presenting this view stated that the burden for the initial implementation should not be placed on the general licensee, but should be on the NRC, associated Agreement State, or the specific licensee distributor.

Response: Although there may be some general licensees for which the NRC does not have current name and address information and who may not get registered, the Commission has decided not to add a requirement that the general licensee complete registration by a certain time, whether or not the NRC requests registration. The NRC will rely instead on its process of specifically requesting the general licensee to register those sources and devices to which the registration requirement applies. No change has been made to the proposed rule.

2. The Commission requests comment on whether it is appropriate for new devices obtained by registrants to be registered when the annual reregistration is carried out without the NRC having earlier contact after additional devices are received. Earlier contact could be made either by an acknowledgment by NRC to the user or by a required response from the general licensee to account for the additional device(s).

Comment: There was a mix of responses to this question. Three commenters, including two States, would like to see earlier acknowledgement. The other two States that commented, as well as a couple of general licensees, thought it was logical, efficient, and effective to add new devices at the time of reregistration.

Response: The Commission believes that updating at time of reregistration is adequate, and that the additional paperwork of reporting receipts in the interim is not justified. No change has been made from the proposed rule.

3. The Commission solicits comment on whether general licensees should be required to assign a backup responsible individual (BRI).

Comment: Two commenters supported the addition of a requirement for a backup responsible individual. Many others were against it. The main concern of those supporting a BRI was that if the person in that role leaves the company, no one else may know about the general license and associated requirements. Those opposed thought it was unnecessary and impractical especially in the case of very small businesses.

Response: The Commission continues to believe that a requirement to appoint a BRI is not appropriate. It should be noted that the process of appointing an RI involves management; someone other than the RI would know that there is a general license and associated requirements. As this is a management appointment, management would know to reassign these duties if the individual leaves the organization. An employee should not be obtaining a device and assuming that he can act as the RI without his management being aware of these responsibilities.

4. The Commission seeks comment on how best to achieve and enforce the intent that full disclosure of information required to be provided to general licensee customers by distributors be made early enough to be considered in a decision to purchase. For example: Would it be better to use the words, ''prior to purchase'' in the regulatory text?

Comment: Some commenters objected to the possible use of the words ''prior to purchase.'' Some expressed the concern that ''prior to transfer'' would not be adequate to achieve the objective. Most commenters talked about the importance of achieving the objective of disclosure before decision, without commenting on the best approach. A couple of the commenters wanted written acknowledgment that the information had been received and read before transfer. However, a couple of the distributors thought it was unreasonable and less effective to require information to be provided prior to transfer instead of at transfer.

Response: The Commission believes the words, ''prior to purchase,'' is unnecessarily restrictive and presents more problems than ''prior to transfer.'' Therefore, the final rule requires that the required information regarding the device be provided to the purchaser ''before the device may be transferred.'' Although providing information with the device at the time of transfer may, in a few cases, not always get it to the person actually using the device, the Commission believes that overall, upfront disclosure prior to transfer of the device is preferable. The general licensee personnel considering the purchase should see the requirement for appointing a ''responsible individual,'' and, if they purchase the device, will have to provide the distributor the name of the person appointed. The final rule also allows flexibility to the distributor to use another approach to disclose the information, if approved by the Commission. For example, if the distributor believes that providing some of the detailed regulatory text at the time of transfer would be more effective for his customers, he may propose this to the Commission; the Commission would have to determine whether the upfront disclosure under the proposal is adequate.

5. The Commission seeks comment on the advantages and disadvantages of implementing a national database of general licensees and their devices.

Comment: There was considerable support for establishing a national database but also some concerns about integrity and security. Those supporting a national database pointed to the ease of tracking the responsible parties when abandoned devices are found. Some commenters thought it would make discrepancies easier to reconcile. Cost was mentioned as a possible concern for both a national database and separate databases in each jurisdiction. Potential disadvantages included potential misuse by outsiders. There were questions about who would have the authority to make changes, how changes and additions would be made, what mechanism would be used to ensure accuracy and completeness, and who would pay the cost of establishing a national database. One Agreement State suggested that a new database may or may not be effective during the first 5 years of operation, based on their experience, which revealed difficulties that were overcome only with time and experience. They stated that, they would be reluctant to exchange their existing database for one introduced by NRC until the new national database had been proven effective over several years at no additional cost to the regulated community. Another Agreement State indicated that it would likely maintain its own database to support its registration program. That State thought that even though a national database would be quicker in tracking a device, there was no urgency with identifying a responsible party, once a source is secured. It also noted that once a source is smelted there is no serial number or similar information to trace.

Response: The Commission believes that it is best to implement the new database for NRC general licensees, use it for implementing a registration program, gain experience with it, and give consideration to expanding the database at a later date.

E. Additional Comment on Implementation Issues

Comment: One commenter asked whether there is a way for general licensees to request a list of devices that should be in their possession, stating that this would be a great benefit to the ''responsible individual'' once these proposed rules are implemented.

Response: General licensees can and have contacted NRC to obtain this type of information. They can write to Director, Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comment: One commenter recommended that the NRC develop a list of § 31.5 licensed devices and make the list readily available to the public, possibly via the NRC web site. The list should contain the manufacturer, model number, and brief description of the device and should also state whether the device meets the registration criteria. This would assist current general licensees in identifying § 31.5 devices already in their possession.

Response: Information is available on the Internet on manufacturers of devices, model numbers, etc. in the Sealed Source and Device Registry (SSDR) at http://www.hsrd.ornl.gov/nrc/ssdr/ssdrindx.htm. The electronic version is not currently complete, but is expected to be complete relatively soon. The SSDR includes devices that are generally licensed, specifically licensed, and exempt. Creating a separate set of information on the Internet of devices allowed under a general license would be a significant effort, and would still not allow the general licensee to identify which devices have been received. The current information is organized by name of manufacturer and can provide additional information about a device if one knows the manufacturer and model number. However, the SSDR provides a maximum activity that is allowed in a device and the individual device may have a lesser amount of activity. Thus the SSDR information would not and can not allow one to determine whether a device is subject to registration. However, the general licensee does not need to determine this in advance, as the NRC will contact the licensee requesting verification of registration information. The NRC is not assessing a fee the first time this request is being made for devices held before the registration requirement.

F. Comment on Enforcement and Civil Penalties

Comment: One commenter asked whether past inspection and enforcement history of a specific license may be used to escalate the enforcement actions against the general license and vice versa. He also asked if that were the case, is there precedence set for these actions?

Response: The NRC's enforcement actions are guided by its written Enforcement Policy (General Statement of Policy and Procedure for NRC Enforcement Actions, NUREG–1600). The Enforcement Policy encourages licensees to achieve a high standard of compliance in all regulated activities. The NRC's civil penalty assessment process considers, as one of its decisional points, whether there has been any previous escalated enforcement action, regardless of the activity area (Enforcement Policy, Section VI.B.2.). Thus, in a situation where an entity holds both a specific and a general license, escalated enforcement action for activities conducted under one of those licenses may be considered in determining the appropriate enforcement action for activities conducted under the other license. Precedence is not the controlling factor. Each enforcement action is dependent on the circumstances of the case.

Comment: One commenter believed that the civil penalties proposed for the loss or unauthorized disposal do not reflect real safety implications, stating that, in the case of polonium-210 (Po-210), the safety hazard involved is minimal.

Response: As explained in the statement of considerations for the proposed rule, the change to the base civil penalty amounts for loss or unauthorized disposal of a sealed source or device will better relate the size of the civil penalty to the costs avoided by the failure to dispose of the source in an authorized manner. While safety implications are an important consideration, a licensee should not receive an economic benefit by committing a violation. A separate notice, published elsewhere in today's **Federal Register**, establishes the new civil penalty amounts and gives a more complete explanation. The base civil penalties range from $6,000 to $45,000.

Comment: One commenter suggested that the NRC was creating a new class of license. The commenter stated that although a license is not required, there are still several requirements the user has to meet before getting the device, that in essence there are additional prerequisites that must be accomplished by the vendor (distributor) and end user before receiving the device. The commenter also stated that many of these prerequisites are going to be difficult to demonstrate compliance.

Response: General licenses are established in various Parts of Title 10, Code of Federal Regulations. Some convey only after certain requirements, such as registration, are fulfilled; others convey automatically. In some cases, general licensees must obtain NRC-licensed materials only from distributors who are specifically licensed to supply them. The practical effect of this restriction is that distributors who wish to supply materials to general licensees must obtain a specific license to do so, and must meet certain NRC requirements. Thus, the Commission does not see this rule as creating a new class of license. Where licensees are required to ''demonstrate compliance,'' such as by maintaining records, that requirement is specifically noted in the regulation or the license. In the absence of a specific requirement, such as recordkeeping, NRC inspectors have a variety of means at their disposal for determining compliance, including interviews, sampling, etc.

Comment: A question raised at the public meeting was: In order for high civil penalties to be a deterrent to improper disposal, how do we keep the general licensee aware of the penalties?

Response: A copy of the **Federal Register** Notice stating the policy of establishing separate civil penalties for loss, abandonment, or improper transfer or disposal is being sent to current § 31.5 general licensees along with this notice. The rule has been revised to require the distributors to also provide a general statement concerning the Enforcement Policy of the NRC with respect to the improper disposal of generally licensed devices.

G. Comments Outside the Scope of the Rulemaking

Comment: One source material licensee presented detailed concerns about the exemption in § 40.13(c)(5) for depleted uranium in aircraft counterweights, calling it a parallel problem, with a more immediate and much larger potential for public exposure.

Response: The commenter has since submitted a petition for rulemaking (PRM–40–28) to address his concern related to aircraft counterweights. This issue is outside the scope of this rulemaking but will be considered in resolving the petition.

Comment: One commenter stated that because the purpose of these regulation changes is to increase the accountability of devices, the limit for Cs-137 that requires registration should be lowered. Currently, some manufacturers are attempting to circumvent the rules and the interest of public health and safety by packaging or directing other people to repackage exempt quantities of radioactive material. If the proposed rule were to state that any quantity of Cs-137, Co-60, strontium-90, Am-241 or any other transuranic distributed under § 31.5 would require registration, the loophole that allows significant quantities to be unaccounted for and improperly disposed of could be closed. This would still allow for the use of individual exempt quantities of material to be used as calibration or check sources.

Response: The issue concerns the improper use of exempt sources in devices to avoid licensing under § 31.5, so adjusting registration criteria in § 31.5 would not address the problem. Thus, this issue is outside the scope of this rulemaking. The Commission is considering action regarding this issue separate from this rulemaking.

Comment: One commenter was concerned about the use of the provision in the recently issued final rule (64 FR 42269; August 4, 1999), providing for the occasional solicitation of information from general licensees stating that with respect to small business general licensees, these solicitations should be conducted only when absolutely necessary.

Response: With the exception of the first round of registration to be conducted under § 31.5(c)(11), the Commission is not expecting to make numerous requests for information from general licensees under this provision and will give appropriate consideration to the justification of any burden placed on these licensees when making such requests.

In addition, editorial changes have been made in the revisions to improve the organization and readability of the regulations being revised. These types of changes are not discussed further in this notice. A few comments were received concerning possible clarifications of the rule language. These have been considered in writing the final rule.

Availability of Detailed Summary of Comments

A more detailed document that presents all of the comments sorted by subject is available. This document is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. Single copies may be obtained by calling Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555–0001; telephone (301) 415–6264; or e-mail at CRM@nrc.gov.

Additional Revisions in Final Rule

During the development of plans for implementing the revised regulations, some issues were identified related to the efficiency of the program. Some minor changes have been made in the final rule to improve the clarity of the regulation and the efficiency of implementing it.

Section 31.5(c)(5)—It has been clarified that, in addition to the device itself, any radioactive material no longer within the device, can only be transferred to a specific licensee authorized to receive it or as otherwise approved by the Commission. Section 30.41 would limit such transfers; however, it is preferable for this point to be clear in § 31.5.

Section 31.5(c)(8)—Paragraph 31.5(c)(7) allows export of a device in accordance with part 110. This would seem in conflict with the limited set of options for transfer in § 31.5(c)(8). An exception such as already exists for transfers under § 31.5(c)(9) has been added. Also, a requirement to report in the case of export has also been added to allow the NRC to update its records in the case of disposition of the device by export. This is estimated to occur rarely and add few additional transfer reports.

Before 1978, § 31.5(c)(7) indicated that a specific license was required to export devices. When part 110 was added to incorporate all the requirements for import and export of nuclear equipment and material, § 31.5(c)(7) was revised to indicate that devices can only be exported in accordance with part 110. Section 110.23 provides a general license to export byproduct material. There are restrictions on types and quantities of materials and export to certain countries is not permitted. This section has been revised over time. Currently, most, if not all devices under § 31.5 would be allowed to be exported under this general license without any reporting requirement. Because a specific license is no longer required, the Commission would not know when a general licensee has exported devices. Thus, the need to add this circumstance to the reporting requirement.

Section 31.5(c)(9)(i)—The address of the transferee is specified as the mailing address of the transferee for location of use. This is a clarification and consistent with the specification of the address to be provided by the distributors under § 32.52(a) and (b). It also tends to remove any implication that the location of use may change. The title of the responsible person is added to the information provided about the transferee. It should help to reduce the incidence of mail being returned because the individual named no longer works for the general licensee.

In addition, it adds to the information to be provided to the transferee, copies of additional applicable sections of the regulations. This is consistent with the changes to § 32.51a with respect to providing regulatory information to new general licensees.

Section 31.5(c)(13)—For clarification, a statement concerning the practice of considering each addressee at a different location of use as a separate general licensee has been added. This had been included in the discussion, but not the regulatory text of the proposed rule.

Section 31.5(c)(8), (9), and (13)—In each place where the name of the manufacturer of a device is to be provided to the NRC, the words, ''(or initial distributor)'' has been added in case the manufacturer's name is not known to the general licensee. In the case of a U.S. distributor of a device manufactured elsewhere, the name of the initial transferor (distributor) may appear on the label in accordance with the labeling requirements in § 32.51(a)(3) (or comparable Agreement State regulations). The label is a likely source of information for the general licensee in reporting under each of these requirements.

Section 31.5(c)(14)—The address change requirement has been changed to specify that changes are to be reported specifically for the mailing address of the location of use. This is a clarification and consistent with the specification of the address to be provided by the distributors under § 32.52(a) and (b).

Some clarification concerning this requirement needs to be made. In the Statement of Considerations of the proposed rule, it was stated that this would only apply to previously supplied mailing addresses. The reference to previously provided addresses was meant to limit the requirement to the primary address used by NRC for tracking the general licensee (as obtained from the distributor), and not for alternate addresses such as the mailing address of the responsible individual if different from the mailing address for the location of use. The specification of the mailing address for the location of use also limits the requirement to the primary address to be used by NRC, and relieves the general licensee of trying to determine what was previously supplied.

The Statement of Considerations also stated that it was intended to track moves into and within NRC jurisdiction. However, the Commission interprets this provision such that general licensees moving out of NRC jurisdiction are also required to report. Although the period allowed to make a report of an address change extends to a time after leaving NRC jurisdiction, a general licensee is not relieved of the requirement to report the address change because he leaves the Commission's jurisdiction before the time allowed for reporting runs out. If a general licensee intends to move from one jurisdiction to another, he should contact the applicable regulatory authority, NRC or the particular

Agreement State, before doing so to determine the applicable, current regulations in that jurisdiction, even though the requirement allows after-the-fact reporting. Currently, all jurisdictions do not have a comparable general license and certain provisions of the general license may vary among jurisdictions.

Section 31.5(c)(5), (8), (9), and (14)—''ATTN: GLTS'' has been added to the address for all submittals under § 31.5 to improve the efficiency of mail routing within NRC.

Section 32.52(a) and (b)—The title of the responsible individual has been added to the information to be provided about the general licensees' responsible individual in the distributors' material transfer reports. This one additional item should not change the effort involved in obtaining and reporting this information. It should help to reduce the incidence of mail being returned because the individual named no longer works for the general licensee. Although a general licensee, in complying with § 31.5(c)(12), would have to appoint a replacement to a responsible individual when that person leaves or changes assignments, he would only be reporting these changes through the registration process, if subject to registration. Followup for returned mail involves additional effort for NRC, general licensees, and distributors.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' published on September 3, 1997 (62 FR 46517), the final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The revisions to part 32 and § 31.5 are classified as Category B. Through this action, existing provisions of § 31.5 are also being reclassified from Category D to Category B and § 31.6 is being reclassified from Category C to Category B. Although changes are being made to §§ 30.31, 30.34(h)(1), 31.1, and 31.2 as part of this rulemaking, the existing compatibility designations for these regulations are not affected.

Category B means the provisions affect a program element with significant direct transboundary implications. The State program element should be essentially identical to that of NRC. Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met.

Specific information about the compatibility or health and safety components assigned to this rule may be found at the Office of State and Tribal Programs website, http://www.hsrd.ornl.gov/nrc/home.html.

As discussed above, revised § 32.52(a) and (b) would add the following information to the existing distributors' quarterly transfer reporting requirements: the serial number and model number of the device, the date of transfer, the name and license number of the reporting company, and the specific reporting period. The revisions also require the name, title, and phone number of a general licensee's ''responsible individual'' rather than simply a contact and specify that the address of the general licensee be the mailing address for the location of use. According to NRC Management Directive (MD) 5.9, ''Adequacy and Compatibility of Agreement State Programs,'' NRC regulations that should be adopted by an Agreement State for purposes of compatibility should be adopted in a time frame such that the effective date of the State requirement is no later than 3 years after the effective date of NRC's final rule. MD 5.9 also provides that some circumstances may warrant that the States adopt certain regulations in less than the recommended 3-year time frame or that the effective dates for both NRC licensees and Agreement State licensees be the same. The Commission believes it is important to the implementation of this program, and to Agreement State programs, to begin receiving the additional information in the distributors' quarterly transfer reports as soon as possible. The Commission requests Agreement States to require distributors to provide all the information consistent with this rule (§ 32.52(a) and (b)) within 6 months following the effective date of this final action. Agreement States have the flexibility to adopt this provision through rulemaking, license conditions, or other legally binding requirements.

Summary of Final Amendments by Paragraph With Compatibility Categories

Section 30.31—Revision reconciles the apparent conflict between the description of a general license and a registration requirement. (Category C)

Section 30.34(h)(1)—Revision makes the bankruptcy notification requirement applicable to those general licensees subject to the registration requirement. (Category D/H & S)

Section 31.1—Revision clarifies that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees. (Category D)

Section 31.2—Revision clarifies references to the sections of part 30 that are applicable to all of the part 31 general licensees. (Category D)

Section 31.5(b)—Revision clarifies the status of a person who receives a device through an unauthorized transfer by limiting the applicability of the general license to those who receive a device through an authorized transfer; and removes the restriction on devices distributed by Agreement State licensees in Agreement States without a general license. (Category B)

Section 31.5(c)(5)—Revision adds a plan for ensuring that premises and environs are suitable for unrestricted access, to the information that must be sent to NRC in the case of a failure, when device damage or failure is likely to or known to have resulted in contamination; changes the addressee for reporting information concerning a failure; and clarifies that the criteria in § 20.1402 may be applied and that byproduct material no longer in the device may only be transferred to a licensee authorized to receive it or as otherwise approved by the Commission. (Category B)

Section 31.5(c)(8)—Revision allows transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to previously allowed transfers to part 32 (and Agreement State) licensees; allows transfers to other specific licensees, but only with prior written NRC approval; and adds the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device. Revision also requires a report in the case of export under § 31.5(c)(7) and removes the exception to reporting when a device is being replaced. (Category B)

31.5(c)(9)(i)—Revision adds to the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, to provide the serial number of the device and the name, title, and phone number of the person identified as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements, rather than simply a contact name. It also specifies that the address of the transferee be the mailing address at the location of use. In addition, it adds to the information to be provided to the

transferee, copies of additional applicable sections of the regulations. (Category B)

Section 31.5(c)(9)(ii)—Revision adds the term, ''intermediate person,'' to clarify that the only time a report of transfer is not required, is when the information on both an intermediate person and an intended user was provided through the distributor in a quarterly material transfer report. (Category B)

Section 31.5(c)(12)—Adds an explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations. (Category B)

Section 31.5(c)(13)—Adds an explicit requirement for the general licensee to register devices meeting certain criteria, specifying the information to be provided and referencing the fee requirement in Section 170.31. (Actual fee to be added to § 170.31 in next overall fee rulemaking.) (Category B)

Section 31.5(c)(14)—Adds a requirement for the general licensee to notify NRC of changes to the mailing address for the location of use. (Category B)

Section 31.5(c)(15)—Limits to 2 years the amount of time a general licensee can keep an unused device in storage and allows the deferment of testing during the period of storage. It allows a device to be held longer in standby for future use, if the general licensee conducts quarterly inventory for these devices. (Category B)

Section 32.51(a)(4) and (5)—Adds a requirement for an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration. (Category B)

Section 32.51a(a) and (b)—Revision amends the requirements pertaining to the information distributors must provide to the general licensee. Distributors were previously required to provide general licensees with a copy of § 31.5 when the device is transferred. This rule requires that § 31.5 be provided before transfer. The distributor is also required to provide copies of additional applicable Sections of the regulations, a listing of the services that can only be performed by a specific licensee, information regarding disposal options for the devices being transferred, including estimated costs of disposal, and a statement concerning the policy of assessing high civil penalties for improper disposal. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor shall furnish the name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained. (Category B)

Section 32.51a(c)—Allows distributor to propose alternative approach to informing his customers for Commission approval. (Category B)

Section 32.51a(d)—Makes labeling requirements a condition of license 1 year after effective date of rule. (Category B)

Section 32.51a(e)—Adds a requirement for distributors to make available records of final disposition of devices to the various regulatory agencies in the case of bankruptcy or termination of the distributor's license. (Category B)

Section 32.52(a) and (b)—Revision adds the following information to the existing quarterly transfer reporting requirement: the serial number and model number of the device; the date of transfer; for devices received from a general licensee, the type, model number, and serial number of the devices received, the identity of the general licensee by name and address, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; information that has been changed on device labels; the name and license number of the reporting company; and the specific reporting period. Also, the general licensee address is specified as the mailing address for the location of use of the generally licensed device.

The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements, replaces the name and/or position of a simple contact between the Commission and the general licensee. Also, a form (NRC Form 653) will be provided for use in making these reports. However, the use of the form is not required as long as the report is clear and legible and includes all of the required information. (Category B)

Section 32.52(c)—Revises the content of the recordkeeping requirement through specifying that information supporting the revised reports is to be maintained. The period of retention for recordkeeping concerning transfers is reduced from 5 years to 3 years from the date of the recorded event. (Category B)

Early State Input

These final amendments were provided to the Agreement States during their development via the use of the NRC Technical Conference Website and notification to the States of its availability. Input was received following posting from the State of Nebraska. Their comments concerned two areas. The primary issue was the difficulty of keeping track of devices possessed by general licensees, when distributors report all devices transferred to general licensees, but information is not received on those returned. They were in favor of the distributors reporting serial numbers of those devices returned for replacement. They were also concerned about the clarity of which proposed regulatory provisions would apply to all § 31.5 general licensees and which would apply only to those who will register and pay fees.

National Database

The Commission has developed a new computer database to handle information about general licensees and generally licensed devices. Among other improvements from the previous system, it has been designed to handle the registration process efficiently with automated features. The Commission has given some consideration to whether a national database should be established in which information on the identity of general licensees and device information for all jurisdictions would be maintained, making this information accessible to all Agreement States and the NRC. There are variations on the exact approach that might be taken particularly with respect to access and update authority. At this time, the Commission has not yet found it practical to resolve all the issues related to having broad access to the database.

The Commission will give further consideration to establishing such a database at a later date after experience is gained with the new database and the registration program. Establishing a national database would not require rulemaking. However, if it were to be established, one option would be to change the material transfer reporting requirements so that distributors would report all transfers to the NRC rather than reporting to the various jurisdictions into which devices are transferred.

A primary advantage of a national database would be the ease of tracing a ''found'' device back to the general licensee owner responsible for the device. A ''found'' generally licensed device would be considered an orphan

source until the responsible general licensee is identified and the device is returned to the licensee. The Commission is in the process of modifying the Nuclear Materials Events Database (NMED) to accept and track information on orphan sources nationally (*i.e.,* all States). Access to the NMED will be available to the NRC and all the States. The Commission will encourage the States to use NMED for this purpose so that this category of information will be shared nationally. However, NMED will rely on reporting of events for its data. In order for a device to be traced back to the responsible general licensee, each jurisdiction would have to search its own files. In addition, a national general license database would contain the most complete information about general licensees and generally licensed devices and would make that information immediately available.

The primary disadvantage of a national database would be the difficulty of maintaining the security of the data, which is primarily made up of proprietary information. A national database would also present more risk to the integrity of the data, because there would be a higher potential for illicit corruption of data.

Enforcement Policy

On March 9, 1999 (64 FR 11508), the Commission established an interim enforcement policy for violations of § 31.5 that licensees discover and report during the initial cycle of the registration program. This policy supplements the normal NRC Enforcement Policy in NUREG–1600, Rev. 1. It will remain in effect through one complete cycle of the registration program.

Under this interim enforcement policy, enforcement action normally will not be taken for violations of § 31.5 that are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems and otherwise has undertaken good faith efforts to respond to NRC notices and provide requested information. This change from the Commission's normal enforcement policy is to remove the potential for the threat of enforcement action to be a disincentive for the licensee to identify deficiencies. This approach is warranted given the limited NRC inspections of general licensees. This approach is intended to encourage general licensees to determine if applicable requirements have been met, to search their facilities to ensure sources are located, and to develop appropriate corrective action when deficiencies are found. Under the interim enforcement policy, enforcement action, including issuance of civil penalties and Orders, may be taken where there is—

(a) Failure to take appropriate corrective action to prevent recurrence of similar violations;

(b) Failure to respond and provide the information required by regulation;

(c) Willful failure to provide complete and accurate information to the NRC; or

(d) Other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

As noted in the December 2, 1998 (63 FR 66492) proposed rule, the Commission also planned to increase the civil penalty amounts specified in its Enforcement Policy in NUREG–1600, Rev. 1, for violations involving lost or improperly disposed sources or devices. This increase will better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device. Due to the diversity of the types of sources and devices, the Commission is establishing three levels of base civil penalty for loss or improper disposal. The higher tiers are for sources that are relatively costly to dispose of and is based on approximately three times the average cost of proper transfer or disposal of the source or device.

A separate notice, published elsewhere in today's **Federal Register**, establishes the new civil penalty amounts and gives a more complete explanation.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. There are no voluntary consensus standards available concerning accountability of such devices.

The amendments are primarily administrative in nature and include explicit requirements for a registration process and a clarification on which provisions of the regulations apply to all general licenses for byproduct material. This rule also modifies the reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices. Therefore, this action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that the revisions made in this final rule are the types of actions described in the categorical exclusions in § 51.22(c)(1) through (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection requirements in this rule have been approved by the Office of Management and Budget, approval numbers 3150–0017, 3150–0016, and 3150–0001.

The public reporting burden for this information collection is estimated to average 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The time involved is small because many of the amendments are minor revisions to existing information collection requirements. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, 3150–0016, and 3150–0001), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this final regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

Single copies of the analysis may be obtained by calling Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001; telephone (301) 415–6264; or e-mail at CRM@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The most significant cost of this final rule is the fee to be assessed for each registration. The fee will be established as part of the FY 2001 notice and comment fee rulemaking based on that year's budgeted costs, FTE rate, and number of registrants. Based on current information, the fee is expected to be approximately $440–$450. Portions of the final rule apply to the approximately 40,000 persons possessing products under an NRC general license, many of whom may be classified as small entities. However, the annual registration requirement and associated fee apply to about 4300 of these general licensees. Based on input received previously from small entities who hold specific materials licenses, the NRC believes that the part 170 registration fee will not have a significant economic impact on a substantial number of small entities. The NRC believes that the economic impact of the other requirements on any general licensee would be a negligible increase in administrative burden.

The final rule also revises requirements for specifically licensed distributors of certain generally licensed devices. Currently, there are 21 NRC licensed distributors and approximately 83 Agreement State licensed distributors. Many of these licensees are not small entities and the impact to any of these distributors is not expected to be significant in any case.

Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that impose backfits as defined in § 50.109(a)(1).

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, Office of Management and Budget.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 31, and 32.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended, (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Sec. 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486; sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.31 is revised to read as follows:

§ 30.31 Types of Licenses.

Licenses for byproduct material are of two types: General and specific.

(a) The Commission issues a specific license to a named person who has filed an application for the license under the provisions of this part and parts 32 through 36, and 39.

(b) A general license is provided by regulation, grants authority to a person for certain activities involving byproduct material, and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. However, registration with the Commission may be required by the particular general license.

3. In § 30.34, paragraph (h)(1) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(h)(1) Each general licensee that is required to register by § 31.5(c)(13) of this chapter and each specific licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

(i) The licensee;

(ii) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(iii) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

4. The authority citation for Part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

5. Section 31.1 is revised to read as follows:

§ 31.1 Purpose and scope.

This part establishes general licenses for the possession and use of byproduct material and a general license for ownership of byproduct material. Specific provisions of 10 CFR Part 30 are applicable to general licenses established by this part. These provisions are specified in § 31.2 or in the particular general license.

6. Section 31.2 is revised to read as follows:

§ 31.2 Terms and conditions.

The general licenses provided in this part are subject to the general provisions of Part 30 of this chapter (§§ 30.1 through 30.10), the provisions of §§ 30.14(d), 30.34(a) to (e), 30.41, 30.50 to 30.53, 30.61 to 30.63, and Parts 19,

20, and 21, of this chapter [1] unless indicated otherwise in the specific provision of the general license.

7. In § 31.5, the title and paragraphs (b), (c)(5), (c)(8), and (c)(9) are revised and paragraphs (c)(12), (13), (14), and (15) are added to read as follows:

§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.[2]

* * * * *

(b)(1) The general license in paragraph (a) of this section applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in—

(i) A specific license issued under § 32.51 of this chapter; or

(ii) An equivalent specific license issued by an Agreement State.

(2) The devices must have been received from one of the specific licensees described in paragraph (b)(1) of this section or through a transfer made under paragraph (c)(9) of this section.

(c) * * *

* * * * *

(5) Shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 bequerel (0.005 microcurie) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued under parts 30 and 32 of this chapter or by an Agreement State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the byproduct material in the device or as otherwise approved by the Commission. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days. Under these circumstances, the criteria set out in § 20.1402, ''Radiological criteria for unrestricted use,'' may be applicable, as determined by the Commission on a case-by-case basis;

* * * * *

(8)(i) Shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section.

(ii) Shall furnish a report to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days after the transfer of a device to a specific licensee or export. The report must contain—

(A) The identification of the device by manufacturer's (or initial transferor's) name, model number, and serial number;

(B) The name, address, and license number of the person receiving the device (license number not applicable if exported); and

(C) The date of the transfer.

(iii) Shall obtain written NRC approval before transferring the device to any other specific licensee not specifically identified in paragraph (c)(8)(i) of this section.

(9) Shall transfer the device to another general licensee only if—

(i) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this section, a copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001—

(A) The manufacturer's (or initial transferor's) name;

(B) The model number and the serial number of the device transferred;

(C) The transferee's name and mailing address for the location of use; and

(D) The name, title, and phone number of the responsible individual identified by the transferee in accordance with paragraph (c)(12) of this section to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(ii) The device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

* * * * *

(12) Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(13)(i) Shall register, in accordance with paragraphs (c)(13)(ii) and (iii) of this section, devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, or 37 MBq (1 mCi) of americium-241 or any other transuranic (*i.e.*, element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described under paragraph (c)(13)(iii)(D) of this section, represents a separate general licensee and requires a separate registration and fee.

(ii) If in possession of a device meeting the criteria of paragraph (c)(13)(i) of this section, shall register these devices annually with the Commission and shall pay the fee required by § 170.31 of this chapter. Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the Commission. The registration information must be submitted to the NRC within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of paragraph (c)(13)(i) of this section is subject to the bankruptcy notification requirement in § 30.34(h) of this chapter.

(iii) In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Commission—

[1] Attention is directed particularly to the provisions of Part 20 of this chapter concerning labeling of containers.

[2] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

(A) Name and mailing address of the general licensee.

(B) Information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label).

(C) Name, title, and telephone number of the responsible person designated as a representative of the general licensee under paragraph (c)(12) of this section.

(D) Address or location at which the device(s) are used and/or stored. For portable devices, the address of the primary place of storage.

(E) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information.

(F) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(iv) Persons generally licensed by an Agreement State with respect to devices meeting the criteria in paragraph (c)(13)(i) of this section are not subject to registration requirements if the devices are used in areas subject to NRC jurisdiction for a period less than 180 days in any calendar year. The Commission will not request registration information from such licensees.

(14) Shall report changes to the mailing address for the location of use (including change in name of general licensee) to the Director of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(15) May not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by paragraph (c)(2) of this section need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

8. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

9. In § 32.51, paragraphs (a)(4) and (5) are added to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.

(a) * * *

(4) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, ''Caution-Radioactive Material,'' the radiation symbol described in § 20.1901 of this chapter, and the name of the manufacturer or initial distributor.

(5) Each device meeting the criteria of § 31.5(c)(13)(i) of this chapter, bears a permanent (*e.g.*, embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, ''Caution-Radioactive Material,'' and, if practicable, the radiation symbol described in § 20.1901 of this chapter.

* * * * *

10. Section 32.51a is revised to read as follows:

§ 32.51a Same: Conditions of licenses.

(a) If a device containing byproduct material is to be transferred for use under the general license contained in § 31.5 of this chapter, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes—

(1) A copy of the general license contained in § 31.5 of this chapter; if paragraphs (c)(2) through (4) or (c)(13) of § 31.5 do not apply to the particular device, those paragraphs may be omitted.

(2) A copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter;

(3) A list of the services that can only be performed by a specific licensee;

(4) Information on acceptable disposal options including estimated costs of disposal; and

(5) An indication that NRC's policy is to issue high civil penalties for improper disposal.

(b) If byproduct material is to be transferred in a device for use under an equivalent general license of an Agreement State, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes—

(1) A copy of the Agreement State's regulations equivalent to §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter or a copy of §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter. If a copy of the NRC regulations is provided to a prospective general licensee in lieu of the Agreement State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted.

(2) A list of the services that can only be performed by a specific licensee;

(3) Information on acceptable disposal options including estimated costs of disposal; and

(4) The name or title, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained.

(c) An alternative approach to informing customers may be proposed by the licensee for approval by the Commission.

(d) Each device that is transferred after (insert date 1 year after the effective date of this rule) must meet the labeling requirements in § 32.51(a)(3) through (5).

(e) If a notification of bankruptcy has been made under § 30.34(h) or the license is to be terminated, each person licensed under § 32.51 shall provide, upon request, to the NRC and to any appropriate Agreement State, records of final disposition required under § 32.52(c).

11. Section 32.52 is revised to read as follows:

§ 32.52 Same: material transfer reports and records.

Each person licensed under § 32.51 to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a) The person shall report all transfers of devices to persons for use under the general license in § 31.5 of this chapter and all receipts of devices from persons licensed under § 31.5 to the Director of the Office of Nuclear Material Safety and Safeguards, ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The report must be submitted on a quarterly basis on Form 653—''Transfers of Industrial Devices Report'' or in a clear and legible report containing all of the data required by the form.

(1) The required information for transfers to general licensees includes—

(i) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use.

(ii) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) For devices received from a § 31.5 general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(4) If the licensee makes changes to a device possessed by a § 31.5 general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(5) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(6) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(7) If no transfers have been made to or from persons generally licensed under § 31.5 of this chapter during the reporting period, the report must so indicate.

(b) The person shall report all transfers of devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.5 of this chapter and all receipts of devices from general licensees in the Agreement State's jurisdiction to the responsible Agreement State agency. The report must be submitted on Form 653—''Transfers of Industrial Devices Report'' or in a clear and legible report containing all of the data required by the form.

(1) The required information for transfers to general licensees includes—

(i) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use.

(ii) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(4) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(5) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(6) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(7) If no transfers have been made to or from a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

(c) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by this section. Records required by this paragraph must be maintained for a period of 3 years following the date of the recorded event.

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31873 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Determinations of Prudency and Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and Notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service, have reconsidered our findings concerning whether designating critical habitat for 38 federally protected plants from the islands of Maui and Kahoolawe, some of which may also occur on other Hawaiian Islands, listed between 1991 and 1996, would be prudent. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We have determined that critical habitat is prudent for 37 of these species since the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation that may result from human activity. We propose that designation of critical habitat is not prudent for one species, which is no longer extant in the wild and for which no genetic material is currently extant, because such designation would not be beneficial to this species.

We propose critical habitat designations for a total of 50 species in 52 units on Maui and 4 units on Kahoolawe at this time. The approximate land area within these units totals 13,574 hectares (33,614 acres) on Maui and 207 hectares (512 acres) on Kahoolawe. This proposed rule includes proposed designations for 33 of the 37 species mentioned above. Critical habitat is not proposed for four species that are currently only found in areas on Maui that are permanently protected and managed. In addition, critical habitat is being proposed for six other species from Maui and Kahoolawe that were listed in 1999. We are also proposing critical habitat on Maui and Kahoolawe for 11 species which also occur on Kauai.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by February 16, 2001. Public hearing requests must be received by February 1, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

You may send comments by electronic mail (e-mail) to mandk_crithab_pr@fws.gov. See the Public Comments Solicited section in **SUPPLEMENTARY INFORMATION** below for file format and other information about electronic filing.

You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), have reconsidered our previous findings concerning whether designating critical habitat for some of the 69 Federally protected plants currently or historically found on the islands of Maui and Kahoolawe is prudent. Table 1 lists the species that are currently found on Maui and/or Kahoolawe, reported to occur on these islands, or were historically present (not seen for more than 30 years). Seventeen of these species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Dubautia plantaginea* ssp. *humilis, Geranium arboreum, Geranium multiflorum, Kanaloa kahoolawensis, Lipochaeta kamolensis, Melicope adscendens, Melicope balloui, Melicope ovalis, Remya mauiensis, Schiedea haleakalensis*, and *Tetramolopium capillare*) are endemic to the islands of Maui and/or Kahoolawe, while 33 species (*Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Diellia erecta, Flueggea neowawraea, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Mariscus pennatiformis, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) are known from Maui and/or Kahoolawe, as well as one or more other islands (Table 1). Two species, *Bidens micrantha* ssp. *kalealaha* and *Cyanea lobata*, were known from Maui and Lanai, but are currently only extant on Maui. *Lysimachia lydgatei* was known from Maui and Oahu, while *Diplazium molokaiense* was known from several islands, but currently both species are extant only on Maui. We believe that one species, *Acaena exigua*, may be extinct. The fourteen remaining species are known only from historical records (pre-1970) on Maui and/or Kahoolawe or from undocumented observations. While these species do occur on other islands, we do not believe they still occur on Maui or Kahoolawe.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 69 SPECIES FROM MAUI AND KAHOOLAWE

Species (common name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, *Ka*hoolawe *Ni*hau
Acaena exigua (liliwai)	H				H		
Alectryon macrococcus (mahoe)	C	C	C		C		
Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina).					C		
Asplenium fragile var. *insulare* (NCN*)					H	C	
Bidens micrantha ssp. *kalealaha* (ko oko olau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano)		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia lindseyana (oha wai)					C	C	
Clermontia oblongifolia ssp. *mauiensis (oha wai)*				C	C		
Clermontia peleana (oha wai)					H	C	
Clermontia samuelii (oha wai)					C		
Colubrina oppositifolia (kauila)		C			C	C	
Ctenitis squamigera (pauoa)	H	C	H	C	C	H	
Cyanea copelandii ssp. *haleakalaensis* (haha)					C		
Cyanea glabra (haha)					C		
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea hamatiflora ssp. *hamatiflora* (haha)					C		
Cyanea lobata (haha)				H	C		
Cyanea mceldowneyi (haha)					C		
Cyrtandra munroi (ha iwale)				C	C		
Delissea undulata (NCN)	C				H	C	Ni (H)
Diellia erecta (Asplenium-leaved diellia)	H	H	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia plantaginea ssp. *humilis* (na ena e)					C		
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Geranium arboreum (nohoanu)					C		
Geranium multiflorum (nohoanu)					C		
Gouania vitifolia (NCN)		C			H	C	
Hedyotis coriacea (kioele)		H			C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (NCN)		C	C	H	C		
Hesperomannia arbuscula (NCN)		C			C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Ischaemum byrone (Hilo ischaemum)	R	H	C	D	C	C	
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H)
Kanaloa kahoolawensis (kohe malama malama o kanaloa).							Ka (C)
Lipochaeta kamolensis (nehe)					C		
Lysimachia lydgatei (NCN)		H			C		
Mariscus pennatiformis (NCN)	H	H			C	H	NW Isles (C)
Melicopoe adcendens (alani)					C		
Melicope balloui (alani)					C		
Melicope knudenii (alani)	C				C		
Melicope mucronulata (alani)			C		C		
Melicope ovalis (alani)					C		
Neraudia sericea (NCN)			C	H	C		Ka (H)
Nototrichium humile (kului)		C			H		
Peucedanum sandwicense (makou)	C	C	C		C		
Phegmariurus mannii (wawae iole)	H				C	C	
Phyotegia mannii (NCN)			C		H		
Phyllostegia mollis (NCN)		C	H		C		
Phyllostegia parvilfora (NCN)		C			H	H	
Planatago princeps (laukahi kuahiwi)	C	C	C		C	H	
Plantanthera holochila (NCN)	C	H	C		C		
Peteris lidgatei (NCN)		C	H		C		
Remya mauiensis (NCN)					C		
Sanicula purpurea (NCN)		C			C		
Schiedea haleakalensis (NCN)					C		
Schiedea hookeri (NCN)		C			H		
Schiedea nuttallii (NCN)	C	C	C		R		
Sesbania tomentosa (NCN)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Sptermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium arenarium (NCN)						H	C
Tetramologpium capillare (pamakani)					C		
Tetramologpium remyi (NCN)				C	H		

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 69 SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species (common name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, *Ka*hoolawe *Ni*hau
Vigna o-waheuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Zanthoxylum hawaiiense (a w)	C		C	H	C	C	
KEY							

C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* NCN—no common name.

When 38 of the above species where listed between 1991 and 1996 (*Acaena exigua, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare, and Vigna o-wahuensis),* we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. However, after reevaluating our previous decision, we propose that critical habitat designation for 37 of these species would be prudent because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks, resulting from human activity, of designation (see CRITICAL HABITAT section below). We propose that designation of critical habitat is not prudent for *Acaena exigua,* which we believe may be extinct, because such a designation would not be beneficial to this species, since we believe the species may be extinct.

Proposed determinations for 11 species that also occur on the island of Kauai (*Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawraea, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense*) were published in a previous proposal (65 FR 66808). In addition, the designation of critical habitat was found to be prudent for six species (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis*) when they were listed as endangered in 1999.

An additional 14 species listed in Table 1 are known only from historical records (pre-1970) on Maui and/or Kahoolawe or from undocumented observations. Since these species do not currently occur on Maui or Kahoolawe, is it not prudent to designate critical habitat for them on these islands. However, proposed determinations and critical habitat designations or non-designations for these species will be included in other proposed rules for the islands on which they currently occur (Table 2).

TABLE 2.—PROPOSED RULES IN WHICH PRUDENCY AND CRITICAL HABITAT DESIGNATIONS/NON-DESIGNATIONS WILL BE PROPOSED FOR 14 SPECIES THAT NO LONGER OCCUR ON MAUI OR KAHOOLAWE.

SPECIES	Proposed rule in which prudency will be proposed	Proposed rule in which critical habitat designations/non designations will be discussed
Asplenium fragile var *insulare*	Hawaii	Hawaii
Brighamia rockii	Molokai	Molokai
Clermontia peleana	Hawaii	Hawaii
Delissea undulata	Hawaii	Hawaii
Gouania vitifolio	Hawaii	Hawaii; Oahu
Isodendrion pyrifolium	Hawaii	Hawaii
Nototrichium humile	Oahu	Oahu
Phyllostegia mannii	Oahu	Oahu
Phyllostegia parviflora	Oahu	Oahu
Schiedea hookeri	Oahu	Oahu
Schiedea nuttallii	Kauai (65 FR 66808)	Kauai; Oahu; Molokai
Solanum incompletum	Hawaii	Hawaii
Tetramolopium arenarium	Hawaii	Hawaii
Tetramolopium remyi	Lanai	Lanai

The plants discussed in this proposed rule were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. At the time many of these plants were listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These not prudent determinations, along with 196 others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii). On March 9, 1998,

the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii. On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. (See 65 FR 66808 for complete discussion about the above litigation.)

In addition, a second court order (*Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–002283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000)) requires that we propose critical habitat for 10 other plant species, 6 of which are addressed in this proposed rule (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, Kanaloa kahoolawensis*) for which determination was found to be prudent at the time of listing. This second court order requires us to publish proposed critical habitat designations by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

To comply with these court orders, we plan to publish seven proposed rules, between now and April 30, 2002, in the following island groupings: Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwest Hawaiian Islands; Hawaii; and Oahu. Each notice will contain the proposed prudency determinations for species occurring on that island for which prudency determinations have not been previously proposed, and proposed designations or non-designations of critical habitat for each plant species known to occur from that island. The proposed prudency determination and proposed rule for Kauai and Niihau plants was published in the **Federal Register** on November 7, 2000 (65 FR 66808). When a plant species occurs on more than one island, critical habitat may be proposed in all of the proposed rules that cover the respective islands.

The Islands of Maui and Kahoolawe

Maui, the second largest island in Hawaii at 1,888 square kilometers (sq km) (729 square miles (sq mi)) in area, was formed from the remnants of two large shield volcanoes, the older west Maui volcano (1.3 million years) on the west and the larger, but much younger Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has an average rainfall of 1,020 centimeters (cm) (400 inches (in.)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in.) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is below the level at which precipitation develops, and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 km (11 mi) long by 11.3 km (7 mi) wide, comprising some 11,655 hectares (ha) (28,800 acres (ac)). Located in the lee of Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 500 millimeters (mm) (20 in.), with most if it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon et al. 1992).

Discussion of the Plant Taxa

Species Endemic to Maui and/or Kahoolawe

Argyroxiphium sandwicense ssp. *macrocephalum*

Argyroxiphium sandwicense ssp. *macrocephalum*, a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *Argyroxiphium sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence, the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15–50 years (Loope and Medeiros, in press). The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered) (Loope and Crivellone 1986). Numbers recorded in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope to explore whether enhanced flowering is related to increased UV–B radiation due to temporary reduction of stratospheric ozone (United States Fish and Wildlife Service (USFWS) 1997). Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. It has been demonstrated that *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii,* have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals flower for several years before dying (Carr 1985).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100–3,000 m (6,890–9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park, and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve (Loope and Crivellone 1986; TNC 1998). There are a total of seven populations on Federal and privately owned land, with 39,013 to 44,013 individual plants (TNCH 1998; Geographic Decision Systems International (GDSI) 2000; Hawaii Natural Heritage Program (HINHP) Database 2000).

The habitat of this species consists primarily of dry, well-drained, otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones. Mean annual precipitation is approximately 75–125 cm (29–49 in.). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days (USFWS 1997). This species is found in alpine dry shrubland with native species including: *Agrostis sandwicensis* (bent grass), *Deschampsia nubigena* (hair grass), *Dubautia menziesii* (na ena e), *Silene*

struthioloides (catchfly), *Styphelia tameiameiae* (pukiawe), *Metrosideros polymorpha* (ohia), *Tetramolopium humile* (pamakani), and *Trisetum glomeratum* (pili uka) (USFWS 1997).

The threats to this species are loss of pollinators due to the Argentine ant (*Iridomyrmex humilis*) and alien yellowjackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*), the larvae of a native phycitid moth (*Rhynchephestia rhabdotis*), and the endemic cerambycid beetle (*Plagithmysus terryi*); limited natural range which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the alien plant species *Verbascum thapsus* (mullein) and *Pennisetum setaceum* (fountain grass); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (USFWS 1997; 57 FR 20772).

Clermontia samuelii

Clermontia samuelii, a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *Clermontia samuelii* ssp. *hanaensis* is differentiated from *C. samuelii* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the more leeward (southeastern) side of Haleakala (Medeiros and Loope 1989; HINHP Database 2000). Currently, *C. samuelii* ssp. *hanaensis* is known from the northeastern side of Haleakala, within Haleakala National Park, Hanawi Natural Area Reserve (NAR), and Hana Forest Reserve. There is a total of five populations with 600 individual plants on State and Federal lands (HINHP Database 2000; GDSI 2000; B. Hobdy *in litt.* 2000; K. Wood *in litt.* 2000). *C. samuelii* ssp. *samuelii* is known from three populations totaling 50 to 100 individuals on State and Federal lands within Haleakala National Park, Hanawi NAR, and the Hana and Koolau forest reserves (Warshauer 1998; USFWS 1999; GDSI 2000; HINHP Database 2000; K. Wood *in litt.* 2000).

Clermontia samuelii ssp. *hanaensis* is found between 735 and 1,060 m (2,400 and 3,475 ft) elevation, while *C. samuelii* ssp. *samuelii* is typically found between 1,725 to 2,100 m (5,660 to 6,900 ft) elevation (64 FR 48307; HINHP Database 2000; K. Wood *in litt.* 2000). *C. samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* (uluhe) forest with *Tetraplasandra oahuensis* (ohe mauka), *Hedyotis terminalis* (manono), *Hedyotis hillebrandii* (manono), *Broussaisia arguta* (kanawao), *Cibotium* sp. (hapuu), *Argyroxiphium grayanum* (greensword), *Dubautia* sp. (na ena e), *Clermontia arborea* (oha wai), *Psychotria mariniana* (kopiko), *Melicope clusifolia* (alani), *Diplazium sandwichianum* (NCN), *Peperomia obovatilimba* (ala ala wai nui), *Adenophorus tamariscinus* (pendant fern), *Vaccinium* sp. (ohelo), *Carex alligata* (NCN), *Melicope* sp. (alani), and *Cheirodendron trigynum* (olapa) (HINHP Database 2000). *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest with *Hedyotis hillebrandii, Cibotium* sp., *Broussaisia arguta, Dubautia* sp., *Diplazium sandwichianum, Rubus hawaiiensis* (akala), *Clermontia arborescens* ssp. *waihiae* (oha wai), *Vaccinium* sp., *Carex alligata,* and *Melicope* sp. (HINHP Database 2000).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and/or destruction by feral pigs (*Sus scrofa*) and competition with alien plant taxa such as *Tibouchina herbacea* (glorybush), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), *Juncus* sp. (NCN), *Hedychium coronarium* (ginger), and *Hedychium gardnerianum* (64 FR 48307; K. Wood *in litt.* 2000). In addition, two extremely invasive alien plant taxa, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled (64 FR 48307). The habitat of *C. samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State owned lands. The population within the National Park has been fenced and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park populations must constantly be monitored to prevent further occurrence (64 FR 48307). Competition with alien plant taxa such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is a major threat to this subspecies (K. Wood *in litt.* 2000). In addition, rats (mainly black rat (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to both subspecies (64 FR 48307).

Cyanea copelandii ssp. *haleakalaensis*

Cyanea copelandii ssp. *haleakalaensis,* a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex sap. This subspecies is differentiated from the other subspecies by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red due to the covering of hairs (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley (Lammers 1999). Currently, this taxon is known from three populations with a total of 205 individuals in Kipahulu Valley within Haleakala National Park; west of Kuhiwa Stream and Valley in Hanawi NAR; and on lower Waikamoi flume, which is privately owned (64 FR 48307; Warshauer 1998; HINHP Database 2000; GDSI 2000).

Cyanea copelandii ssp. *haleakalaensis* is found on stream banks and wet scree (a sloping mass of rocks at the base of a cliff) slopes in montane wet or mesic forest dominated by *Acacia koa* (koa) and/or *Metrosideros polymorpha* at elevations between 730 and 1,340 m (2,400 and 4,400 ft) (64 FR 48307; HINHP Database 2000). Associated species include *Cibotium* sp., *Perrottetia sandwicensis* (olomea), *Psychotria hawaiiensis* (kopiko ula), *Broussaisia arguta,* and *Hedyotis acuminata* (au) (64 FR 48307; HINHP Database 2000).

The major threats to this species are habitat degradation and/or destruction by feral pigs; competition with several alien plant taxa; rats; slugs; and potential extinction due to random environmental events due to small population sizes (64 FR 48307).

Cyanea glabra

Cyanea glabra, a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately lobed juvenile leaves (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui (64 FR 48307; HINHP Database 2000). Currently, this species is known from a single population of 12 individual plants on privately owned land in Kauaula Valley (GDSI 2000; HINHP Database 2000).

Cyanea glabra is found on soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha,* at elevations between 800 to 1,340 m (2,625 to 4,400 ft) (HINHP Database 2000).

The threats to this species are slugs; habitat degradation and/or destruction by feral pigs; flooding; competition with several alien plant taxa; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events due to the small number individuals in the only remaining population (64 FR 48307).

Cyanea hamatiflora ssp. *hamatiflora*

Cyanea hamatiflora ssp. *hamatiflora,* a short-lived perennial and member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui (HINHP Database 2000). Currently, this taxon is known from nine populations with a total of 22 individuals in Haipuaena Gulch in the Koolau Forest Reserve; along East Wailuaki Stream in the Koolau Forest Reserve; upper Kipahulu Valley in Haleakala National Park; and between Puu Ahulili and Kaupo Gap (State, Federal, and privately owned lands) (Warshauer 1998; GDSI 2000; HINHP Database 2000).

Typical habitat for this taxon is montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* sp. and/or native shrub understory and closed *Acacia koa-M. polymorpha* wet forest from 975 to 1,500 m (3,200 to 4,920 ft) elevation (HINHP Database 2000). Associated native plant taxa include *Dicranopteris linearis, Cheirodendron trigynum, Broussaisia arguta, Cyanea solenocalyx* (haha), *Cyanea kunthiana* (haha), *Vaccinium* sp., *Melicope* sp., and *Myrsine* sp. (kolea) (64 FR 48307; HINHP Database 2000).

The threats to this species are habitat degradation and/or destruction by feral pigs; landslides; competition with the alien plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (64 FR 48307).

Cyanea mceldowneyi

Cyanea mceldowneyi (a member of the bellflower family (Campanulaceae)) is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk, long (40 mm (1.6 in.)) white-colored corollas, and leaf blade size and shape (Lammers 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1997).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala (Lammers 1999). Currently, this species is known from six populations with a total of 31 individuals, in the vicinity of Waikamoi Drainage on East Maui, on or near State and privately owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000).

The habitat of this species is montane wet forest with mixed *Metrosideros polymorpha-Acacia koa* at elevations between 925 and 1,280 m (3,030 and 4,200 ft) (Lammers 1999; HINHP Database 2000). Associated native plants include *Melicope clusiifolia* (kolokolo mokihana), *Hedyotis* sp. (NCN), *Clermontia arborescens, Diplazium sandwichianum, Broussaisia arguta, Cibotium* sp., *Cyrtandra* sp. (haiwale), *Dicranopteris linearis,* and *Cheirodendron trigynum* (57 FR 20772).

The threats to this species are habitat degradation and physical destruction by feral pigs; small number of populations and individuals (57 FR 20772); and competition with alien plant species, especially *Setaria palmifolia* (palmgrass) (USFWS 1997).

Dubautia plantaginea ssp. *humilis*

Dubautia plantaginea ssp. *humilis,* a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in.) tall with hairless or strigullose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of nerves in the leaves and by the close resemblance of the leaves to the genus *Plantago* (Carr 1985, 1999b). The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *Dubautia plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Carr 1999b).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Dubautia plantaginea ssp. *humilis* has only been reported from two locations in Iao Valley, on West Maui. These populations, totaling 60–65 individuals, are on or near State and privately owned lands (GDSI 2000; HINHP Database 2000).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs between 350 to 400 m (1,150 to 1,300 ft) elevation. Associated native plant taxa include *Metrosideros polymorpha*, *Pipturus albidus* (mamaki), *Eragrostis variabilis* (kawelu), *Carex* sp. (NCN), *Hedyotis formosa* (NCN), *Lysimachia remyi* (kolokolo kuahiwi), *Bidens* sp. (kookoolau), *Pritchardia* sp. (loulu), and *Plantago princeps* (64 FR 48307; HINHP Database 2000).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from alien plant taxa (64 FR 48307). Random environmental events, such as landslides, are a threat because of the limited number of individuals and populations and their narrow distribution.

Geranium arboreum

Geranium arboreum, a long-lived perennial and a member of the geranium family (Geraniaceae). It is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium* by its red petals with the upper three petals erect and the lower

two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

Geranium arboreum is the only species in its genus that appears to be adapted to bird-pollination (Funk 1982, 1988). Native honeycreepers appear to be a major pollination vector. *G. arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution (USFWS 1997). Native honeycreepers are reasonably abundant in both areas (USFWS 1997).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. There are ten populations totaling 142 to147 individuals, on State, private, and federally owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000). These populations are found in Waiohuli; west side of Puu Nianiau; west side of Puu Koolau; Waiakoa and Kealahou; Hapapa Gulch; Kaonoulu; southeast and southwest side of Puu Keokea; and Papaanui (Warshauer 1998; HINHP Database 2000).

Geranium arboreum grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and along intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland and *Metrosideros polymorpha* montane forest, between 1,525 to 2,135 m (5,000 and 7,000 ft) in elevation. Associated native plant species include *Vaccinium reticulatum* (ohelo ai), *Dodonaea viscosa* (aalii), *Styphelia tameiameiae*, *Rubus hawaiiensis*, and *Dryopteris wallichiana* (NCN) (USFWS 1997).

The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from exotic pine trees, which at times of the year completely cover the stigmas of the geraniums, precluding any fertilization by its own species (Funk 1982, 1988). The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (57 FR 20580; USFWS 1997).

Geranium multiflorum

Geranium multiflorum, a long-lived member of the geranium family (Geraniaceae). This perennial is a 1 to 3 m (3 to 10 ft) tall, many-branched shrub. Flowers are in clusters of 25 to 50, and have 5 white petals that are 10 to 15 mm (0.4 to 0.6 in.) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (57 FR 20772; Wagner *et al.* 1999).

There is very little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1997).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui (HINHP Database 2000). This species is now known from Haleakala National Park, Hanawi NAR, Koolau Forest Reserve, and Waikamoi Preserve on Federal, State, and private lands (Warshauer 1998; GDSI 2000; HINHP Database 2000). The nine known populations extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the populations and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (57 FR 20772; HINHP Database 2000).

Geranium multiflorum is found in wet or mesic *Metrosideros polymorpha* montane forest and alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands, between 1,580 and 2,450 m (5,180 and 8,040 ft) in elevation (Wagner *et al.* 1999; HINHP Database 2000). Associated native species include *Coprosma montana* (pilo), *Dryopteris glabra* (hohui), *Dryopteris wallichiana*, *Rubus hawaiiensis*, *Ranunculus* sp. (makou), *Vaccinium* sp., *Hedyotis* sp., and *Sadleria cyatheoides* (amau) (HINHP Database 2000).

The major threat to *Geranium multiflorum* is competition with encroaching alien plant species, particularly *Rubus argutus* (prickly Florida blackberry) (57 FR 20772). A potential threat is habitat destruction by feral pigs and goats in unfenced areas.

Kanaloa kahoolawensis

Kanaloa kahoolawensis, a short-lived perennial and a member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. Up to four fruits develop in each flowering head. One slender, brown seed, about 2 mm (0.08 in.) long, is found in each fruit. There is no other species of legume in Hawaii that bears any resemblance to this species or genus (Lorence and Wood 1994).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (64 FR 48307).

Kanaloa kahoolawensis was unknown to science until its discovery by Steve Perlman and Ken Wood in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *Kanaloa kahoolawensis* is this rocky stack on the southern coast of the island of Kahoolawe, which is owned by the State of Hawaii (Lorence and Wood 1994). While there are no previous records of the plant, pollen core studies on the island of Oahu revealed a legume pollen that could not be identified until this species was discovered. The pollen cores indicate that *K. kahoolawensis* was a codominant with *Dodonaea viscosa* and *Pritchardia* sp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* sp. declined dramatically (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994). Only one population with two living individuals is known (Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm. 2000).

The only known habitat is mixed coastal shrubland on steep rocky talus slopes at 45 to 60 m (150 to 200 ft) elevation. Associated native plant taxa include *Sida fallax* (ilima), *Senna gaudichaudii* (kolomona), *Bidens mauiensis* (kookoolau), *Lipochaeta livarum* (nehe), *Portulaca molokinensis* (ihi), and *Capparis sandwichiana* (maia pilo) (64 FR 48307).

The major threats to *Kanaloa kahoolawensis* are landslides and the alien plant taxa *Emilia fosbergii* (pualele), *Chloris barbata* (swollen finger grass), and *Nicotiana glauca* (tobacco tree) (Lorence and Wood 1994). Goats played a major role in the destruction of vegetation on Kahoolawe

before they were removed (Cuddihy and Stone 1990), and *K. kahoolawensis* probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats (Lorence and Wood 1994). Rats are a potential threat to *Kanaloa kahoolawensis*, because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiense* (Uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species 800 years ago. Trampling and habitat degradation from cats and seabirds are also potential threats (P. Higashino, pers. comm. 2000). Random environmental events and/or reduced reproductive vigor are also a threat to this species, because only two individuals are known (64 FR 48307).

Lipochaeta kamolensis

Lipochaeta kamolensis, a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Wagner *et al.* 1999).

Lipochaeta kamolensis has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April/May. Plants are dry and appear to be metabolically inactive during the dry season. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office (Wagner *et al.* 1999). This species still occurs in the Kamole Gulch, as well as Kepuni Gulch, both above and below Highway 31 on State-owned and private lands. The only known population, which extends over an area of about 40 ha (100 ac), is estimated to contain less than 500 individuals (GDSI 2000, HINHP Database 2000; Kenneth Wood, National Tropical Botanical Garden (NTBG) *in litt.* 1999).

Lipochaeta kamolensis typically grows along the bottom of rock ledges in dry to mesic scrub or dry lowland forests at elevations from 220 to 250 m (720 to 820 ft) (Wagner *et al.* 1999). Associated vegetation includes *Dodonaea viscosa*, *Plumbago zeylanica* (iliee), and *Ipomoea indica* (koali awa) (K. Wood, *in litt.* 1999).

The major threats to *Lipochaeta kamolensis* are habitat destruction and predation by cattle and goats, competition with alien plants such as *Lantana camara*, fire, and the small number of populations subject to extinction by random environmental events (57 FR 20772; USFWS 1997).

Melicope adscendens

Melicope adscendens, a long-lived perennial of the citrus family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *M. adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

Melicope adscendens fruits have been collected in March and July. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope adscendens has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are a total of three known populations on State and private lands: one of the original plants persists near Puu Ouli on privately owned land, 26 individuals are known from Auwahi, and one individual has been found in the Kanaio NAR (GDSI 2000, HINHP Database 2000).

This species typically grows at elevations between 770 and 1,220 m (2,520 and 4,000 ft) in *Nestegis sandwicensis* (olopua) lowland mesic forest or open dry forest on a'a lava flows (a particular type of lava flow with very sharp edges) with pockets of soil. Associated native plant species include: *Pleomele auwahiensis* (hala pepe), *Dodonaea viscosa*, *Osteomeles anthyllidifolia* (ulei), *Alphitonia ponderosa* (kauila), *Chamaesyce celastroides* var. *lorifolia* (akoko), *Santalum ellipticum* (iliahialo e), *Pouteria sandwicensis* (alaa), *Styphelia tameiameiae* and *Xylosma hawaiiensis* (maua) (HINHP Database 2000, K. Wood, *in litt.* 1999).

Major threats are habitat damage and trampling by cattle, competition with alien plant species, including *Lantana camara*, *Bocconia frutescens* (NCN), and *Pennisetum clandestinum*, and reduced reproductive vigor or extinction from random environmental events due to the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer, fire, and ranch activities (59 FR 62346; USFWS 1997; HINHP Database 2000).

Melicope balloui

Melicope balloui, a long-lived perennial of the citrus family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *M. balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and usually persistent sepals and petals (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope balloui has been found only on the northern and southeastern slopes of Haleakala. There are two known populations, located approximately 4.0 km (2.5 mi) apart; one near Puu o Kakae on privately owned land and the second on federally owned land in Kipahulu Valley within Haleakala National Park. The two populations are comprised of approximately 50 individuals (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha* dominated montane wet forest at elevations between 760 and 1,520 m (2,500 and 5,000 ft). Associated taxa include *Machaerina angustifolia* (uki), *Cheirodendron trigynum*, *Labordia hedyosmifolia* (kamakahala), *Coprosma* sp. (pilo), *Dicranopteris linearis*, *Joinvillea ascendens* ssp. *ascendens* (ohe), and *Peperomia subpetiolata* (ala ala wai nui) (HINHP Database 2000, USFWS 2000).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events due to the small number of existing populations and individuals. Potential threats include competition with alien plant taxa, such as *Paspalum conjugatum*, *Clidemia hirta*, *Paspalum urvillei*, *Andropogon virginicus* (broomsedge), and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer; and predation by rats (59 FR 62346; USFWS 1997; HINHP Database 2000).

Melicope ovalis

Melicope ovalis, a long-lived perennial of the citrus family

(Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of *M. anisata.* Each flower cluster is on a main stalk and comprises three to seven flowers on individual stalks. Further details of the flowers are unknown. The fruit, a capsule, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds. The exocarp and endocarp are both hairless. *M. ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Melicope ovalis has been found only on the eastern and southeastern slopes of Haleakala. There is one known population with less than 300 individuals, found on federally owned land in Kipahulu Valley in Haleakala National Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 850 and 1,430 m (2,800 and 4,700 ft). Associated taxa include *Dicranopteris linearis*, *Machaerina angustifolia*, *Labordia hedyosmifolia*, *Wikstroemia oahuensis* (akia), *Dubautia plantaginea*, *Hedyotis hillebrandii*, *Broussaisia arguta*, *Cheirodendron trigynum*, and *Perrottetia sandwicensis* (USFWS 1997; HINHP Database 2000).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction due to random environmental events. Competition with introduced plants such as *Paspalum conjugatum*, *Clidemia hirta*, *Rubus rosifolius* (thimbleberry) and *Psidium cattleianum*, seed predation by rats, and susceptibility to black twig borer are also threats to this species (59 FR 62346; USFWS 1997; HINHP 2000; K. Wood *in litt.* 1999). Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the population is compromised.

Remya mauiensis

Remya mauiensis is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. It is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent to weakly erect branches, covered with a fine tan fuzz near their tips. The leaves are narrow, up to about 15 cm (6 in.) long, and are bunched at the ends of the branches. The coarsely toothed leaf blade is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in.) long. The leaves are green on the upper surface and covered with a dense mat of fine white hairs on the lower surface. The flowers are small, about 0.7 cm (0.3 in.) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from three small populations on adjacent ridges on State-owned land in West Maui: Manawainui, Papaalua Gulch, and Ukemehame (GDSI 2000). Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, there is an estimate of 26 individuals (HINHP Database 2000).

Remya mauiensis grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 m (2,800 to 4,100 ft) in elevation, primarily in mixed mesophytic forests, *Metrosideros polymorpha* montane wet forest, or the remnants of such forests. Associated species include: *Diospyros sandwicensis* (lama), *Xylosma hawaiiensis, Nestegis sandwicensis, Myrsine lessertiana* (kolea lau nui), *Wikstroemia* sp. (akia), *Dodonaea viscosa, Diplazium sandwichianum, Lysimachia remyi, Microlepia strigosa* (palapalai), *Melicope* sp., *Alyxia oliviformis* (maile), *Psychotria mariniana, Ctenitis squamigera, Pleomele auwahiensis*, and *Styphelia tameiameiae* (HINHP Database 2000, USFWS 1997).

This species is threatened by extinction due to random catastrophic environmental events by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat due to the introduction of alien plants, such as *Rubus rosifolius* and *Tibouchina herbacea*, and feral pigs (56 FR 1450; USFWS 1997).

Schiedea haleakalensis

Schiedea haleakalensis, a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are arranged in clusters at the ends of the branches. The flower has 5 green, oval sepals; no petals; 5 nectaries; and 10 stamens. Capsules contain grayish to reddish brown seeds. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

Schiedea haleakalensis is gynodioecious (individuals either have only female flowers or only perfect flowers) and so likely needs cross pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August through September. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Holua and the west side of Kaupo Gap in the federally owned Haleakala National Park (GDSI 2000; HINHP Database 2000). The two populations are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (HINHP Database 2000).

Schiedea haleakalensis typically grows on sheer, north-facing arid subalpine cliffs at elevations of 1,830 to 2,140 m (6,000 to 7,020 ft) (Wagner *et al.* 1999). Associated vegetation includes *Artemisia mauiensis* (hinahina), *Bidens micrantha* (NCN), *Dubautia* sp., and *Viola chamissoniana* (pamakani) (USFWS 1997; HINHP Database 2000).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and populations (57 FR 20772; USFWS 1997).

Tetramolopium capillare

Tetramolopium capillare, a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in.) long and covered with many glands when young. The very firm, stalkless leaves are involute (edges rolled under). Flower heads are situated singly at the ends of stalks. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in.) high and 7 to 10 mm (0.3 to 0.4 in.) in diameter. In each flower head, 30 to 50 white, male ray florets are surround by 15 to 25 greenish yellow tinged with red, functionally female florets. The achenes (dry, one-seeded fruits) are topped by a white pappus comprising a single series of bristles. *T. capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1999). Currently, four known populations with a total of between 130 and 150 individuals are known to be extant near Halepohaku, Koai, and Kauaula on State and privately owned lands (GDSI 2000; USFWS 2000).

Tetramolopium capillare typically grows on rocky substrates at elevations between 610 and 1,050 m (2,000–3,440 ft) in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland or in *Heteropogon contortus* (pili grass) lowland dry forest. Plant species associated with the higher elevation populations include *Dodonaea viscosa, Metrosideros polymorpha*, and *Styphelia tameiameiae. Dodonaea viscosa, Heteropogon contortus*, and *Myoporum sandwicense* (naio) are associates of the other populations (USFWS 1997).

The major threats to *Tetramolopium capillare* are fires; competition from alien plant species, particularly *Lantana camara, Leucaena leucocephala* (koa haole), and *Rhynchelytrum repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events due to the small number of existing populations and individuals (59 FR 49860; USFWS 1997).

Multi-Island Species

Alectryon macrococcus

Alectryon macrococcus, a long-lived perennial and a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and persistent in *A. macrococcus* var. *auwahiensis*. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in.) or more in diameter (57 FR 20772; Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Molokai, and Maui. On Maui, this taxon is found along the Honokowai Ditch Trail and in Launiupoko Valley, on or near State and privately owned lands (GDSI 2000; HINHP Database 2000). There are three populations with a total of four individuals (HINHP Database 2000). Currently, *A. macrococcus* var. *auwahiensis* is known from three populations with 22 individuals on leeward East Maui in the Auwahi and Kanaio districts, and on the slopes of Haleakala on private land and State-owned, but privately leased, ranchland (Medeiros *et al.* 1986; GDSI 2000; HINHP Database 2000).

The habitat of *Alectryon macrococcus* var. *macrococcus* is dry slopes or in gulches in dense mesic mixed *Metrosideros polymorpha* forest or *Diospyros sandwicensis* forest at elevations of 360–1,070 m (1,180–3,510 ft) (HINHP Database 2000). Associated native plants include *Nestegis sandwicensis* and *Antidesma platyphyllum* (hame). The habitat of *A. macrococcus* var. *auwahiensis* is mixed lowland dry forest at elevations of 360–1,070 m (1,180–3,510 ft). Associated native plants include *Diospyros sandwicensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nestegis sandwicensis, Streblus pendulinus* (aiai), and *Pleomele auwahiensis* (HINHP Database 2000; K. Wood, *in litt.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; alien plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum* (kikuyu grass), *Schinus terebinthifolius* (Christmasberry), and *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic (57 FR 20772).

Bidens micrantha ssp. *kalealaha*

Bidens micrantha ssp. kalealaha, a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens,* such as *B. mauiensis* and *B. menziesii,* and possibly *B. conjuncta* (Ganders and Nagata 1999). Little else is known about the life history of *Bidens micrantha* ssp. *kalealaha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Historically, *Bidens micrantha ssp. kalealaha* was known from Lanai, the south slope of Haleakala on East Maui,

and from one locality on West Maui (Ganders and Nagata 1999; HINHP Database 2000). Currently, this taxon remains only on East Maui in Kahua, Manawainui to Wailaulau, and in Haleakala National Park, on State and Federal lands. There are a total of four populations with less than 2,000 individuals altogether (USFWS 1999; GDSI 2000; HINHP Database 2000).

The habitat of *Bidens micrantha ssp. kalealaha* is blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, or cliff faces at elevations of 1,600 to 2,300 m (5,250 to 7,550 ft) (Ganders and Nagata 1999; HINHP Database 2000). Associated native species include *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Lysimachia remyi, Viola chamissoniana, Dubautia menziesii,* and *Dubautia platyphylla* (na ena e) (Ganders and Nagata 1999; HINHP Database 2000).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (57 FR 20772).

Bonamia menziesii

Bonamia menziesii, a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii (HINHP Database 2000). Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, this species is known from Puu o kali; Honokowai Ditch Trail; and Kanaio NAR. Currently there are three populations containing a total of 11 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Bonamia menziesii is found on a'a lava in mixed open dry forest, or *Erythrina sandwicensis* (wiliwili) lowland dry forest, and in mesic mixed *Metrosideros polymorpha* forest at elevations between 150 and 850 m (490 and 2,800 ft) (HINHP database 1999; K. Wood, *in litt.* 1999). Associated species include *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium* (aiea), *Pouteria sandwicensis, Achyranthes splendens* (NCN), *Acacia koaia* (koaia), *Sida fallax, Reynoldsia sandwicensis* (ohe), *Sicyos* sp. (anunu), *Lipochaeta rockii* (nehe), *Nototrichium* sp. (kului), *Myoporum sandwicense* (HINHP Database 2000; K. Wood, *in litt.* 1999).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of alien plant species, particularly *Pennisetum setaceum, Lantana camara,* and *Bocconia frutescens;* and an alien beetle (*Physomerus grossipes*) (59 FR 56333).

Cenchrus agrimonioides

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades which are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown, however, this species has been observed to produce fruit year round (USFWS 1999).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui, and an undocumented report from the Island of Hawaii (61 FR 53108). Historically, *C. agrimonioides* var *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973 (61 FR 53108; Corn 1980). Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from a single population within the Kanaio NAR, containing an unknown number of individuals (HINHP Database 2000).

Cenchrus agrimonioides var. *agrimonioides* is found on rough a'a lava scree in mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 560 and 820 m (1,830 and 2,700 ft). Associated plants include *Alyxia oliviformis, Canthium odoratum* (alahee), *Carex* sp., *Diospyros* sp. (lama), *Styphelia tameiameiae,* and *Eragrostis variabilis* (61 FR 53108; HINHP Database 2000).

The major threats to the only known population of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with alien plants; browsing and habitat degradation by goats and cattle; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (61 FR 53108).

Centaurium sebaeoides

Centaurium sebaeoides is an annual herb in the gentian family (Gentianaceae), with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea,* which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (56 FR 55770; Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains (USFWS 1995c). Other than that, little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental regulations, and limiting factors are generally unknown.

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999). On Maui, there are three populations of this species, with a total of more than 50 individuals, on or near State and privately owned lands, north of Waihee; Puu Koae; and near the mouth of Makamakaole Stream (HINHP Database 2000).

This species typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 250 m (820 ft) elevation (56 FR 55770; Wagner *et al.* 1999). Associated species include *Panicum torridum* (kakonakona), *Lysimachia mauritiana* (kolokolo kuahiwi), *Schiedea globosa* (NCN), *Lipochaeta integrifolia* (nehe), *Argemone glauca* (pua kala), *Bidens mauiensis, Lycium sandwicense* (ohelo kai), and *Dicranopteris linearis* (HINHP Database 2000).

The major threats to this species on Maui are habitat degradation by feral goats and cattle; competition from the alien plant species *Leucaena leucocephala;* trampling by humans on or near trails; and fire (56 FR 55770).

Clermontia lindseyana

Clermontia lindseyana, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5–6 m (8.2 to 20 ft) tall (Lammers 1999). *Clermontia lindseyana* is either terrestrial or epiphytic, living on the surface of other plants. The upper surface of the oblong-shaped leaves is dark green while the lower is pale green or purplish and hairy. Leaf stalks are 2.5–7 cm (1–2.8 in.) long and hairy. Berries are 2.5–4 cm (1–1.6 in.) wide, almost round, and orange. *Clermontia lindseyana* is easily separable from the other taxa within this genus by several characters: much larger leaves and flowers, similar petals and sepals, and spreading floral lobes (Cuddihy *et al.* 1983; Lammers 1999). Rock (1962) commented on the leaves being conspicuously hairy beneath.

This species was observed in fruit from June to October, and in flower from February to August (HINHP Database 2000). No other life history information is currently available.

Historically, *Clermontia lindseyana* was known on Maui from the southern slope of Haleakala and the eastern portion of the island, and on the island of Hawaii. Since 1975, populations of *Clermontia lindseyana* have been identified on Maui and Hawaii (59 FR 10305). The two Maui populations are located in Waiopai and Wailaulau Gulches in the Kahikinui Forest Reserve and in Kula Forest Reserve on State and private lands, and are estimated to total about 330 individuals (Arthur Medeiros, U.S. Geological Survey, Biological Resources Division, *in litt.* 2000; HINHP Database 2000; GDSI 2000).

The extant populations grow in remnant *Acacia koa* mesic forest on the leeward slopes between 1,311 and 2,150 m (4,300 and 7,041 ft). Associated native taxa include the following native plant species: *Cyrtandra oxybapha*, native fern species, *Phlegmariurus mannii, Ilex anomala* (aiea), *Coprosma* sp., and *Myrsine* sp. (HINHP Database 2000; USFWS 1996).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and rooting and trampling by pigs; competition with the alien plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (59 FR 10305).

Clermontia oblongifolia ssp. *mauiensis*

Clermontia oblongifolia ssp. *mauiensis,* a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium) (57 FR 20772; Lammers 1988, 1999). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai.

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July (Rock 1919). Little is known regarding pollination vectors, seed dispersal, or other factors.

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Lanai and from Honomanu Valley on Haleakala, East Maui (57 FR 20772; Lammers 1999). Currently, it is reported from Lanai and Maui. On West Maui, this taxon is known from one population with an unknown number of individuals, along the trail to Puu Kukui in the Honokowai section of the West Maui NAR on or near State and privately owned lands (GDSI 2000; HINHP Database 2000; Lammers 1999).

This plant typically grows on the sides of ridges in *Metrosideros polymorpha*-dominated montane wet forest at elevations between 850–1,000 m (2,800–3,280 ft) (57 FR 20772; HINHP Database 2000). Associated native species include *Dicranopteris linearis, Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., and *Melicope* sp. (57 FR 20772; HINHP Database 2000).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance due to its small size; depressed reproductive vigor; and habitat degradation by feral pigs (57 FR 20772; USFWS 1997).

Colubrina oppositifolia

Colubrina oppositifolia, a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species was observed in fruit and flower during September 1929 and June 1968, and in flower during December 1947 and January 1984 (HINHP Database 2000). No other life history information is currently available.

Historically and currently, *Colubrina oppositifolia* is known from Oahu, Maui, and the Island of Hawaii (59 FR 10305). Currently on Maui, there are two populations containing one individual each on privately owned lands in the Kapunakea Preserve on West Maui and on privately owned lands in the Auwahi area of East Maui (Warshauer 1998; GDSI 2000; HINHP Database 2000).

Habitats of this species are lowland dry and mesic forests dominated by *Diospyros sandwicensis,* and found at elevations between 240 and 915 m (800 and 3,000 ft). Associated native species include *Dodonaea viscosa, Canavalia* sp. (awikiwiki), *Wikstroemia* sp., *Canthium odoratum,* and *Reynoldsia sandwicensis* (HINHP Database 2000).

The threats to this species on Maui are habitat destruction by feral pigs; competition with the alien plants *Lantana camara, Pennisetum setaceum,* and *Schinus terebinthifolius;* black twig borer; Chinese rose beetles (*Adoretus sinicus*); fire; and its small population numbers and limited distribution (59 FR 10305; USFWS 1996).

Ctenitis squamigera

Ctenitis squamigera is a short-lived perennial of the wood fern family (Dryopteridaceae) (Wagner and Wagner 1992). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in.) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in.) long and 1 mm (0.04 in.) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). The indusium is whitish before wrinkling, thin, suborbicular with a narra sinus extending about half way, glabrous except for a circular margin which is ciliolate with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Wagner and Wagner 1992).

Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown.

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii (HINHP Database 2000). It is currently found on Oahu, Lanai,

Molokai, and Maui. There are currently six populations with between 52 and 58 individuals on State and privately owned lands on the island of Maui (GDSI 2000; Hank Oppenheimer, Maui Pineapple Co., *in litt.* 2000; K. Wood, pers. comm. 2000; Joel Lau, HINHP, pers. comm. 2000 and *in litt.* 2000). These populations are all on West Maui, in Honolua Valley; Kahanaiki Gulch; Kanaha Valley; Ukumehame Valley; Kapunakea Preserve; and Iao Valley (H. Oppenheimer, *in litt.* 2000; K. Wood and J. Lau, pers. comm. 2000).

This species is found in the forest understory at elevations of 380 to 1,000 m (1,250 to 3,280 ft) (HINHP Database 2000; H. Oppenheimer, pers. comm. 2000), in *Metrosideros polymorpha* montane wet forest, *Metrosideros polymorpha-Diospyros* sp. mesic forest and diverse mesic forest (HINHP Database 2000). Associated native plant taxa include *Alyxia oliviformis, Freycinetia arborea* (ieie), *Coprosma* sp., *Pleomele* sp. (hala pepe), *Thelypteris globulifera* (NCN), *Sadleria* sp. (amau), *Doodia* sp. (okupukupu lauii), *Pittosporum* sp. (ho awa), *Dryopteris* sp., *Bobea* sp. (ahakea), *Antidesma* sp. (hame), *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. kokio (kokio), *Hedyotis formosa, Pritchardia forbesiana* (loulu), *Myrsine* sp., *Psychotria* sp. (kopiko), and *Xylosma* sp. (maua) (USFWS 1998a; HINHP Database 2000).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant taxa, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (USFWS 1998a).

Cyanea grimesiana ssp. *grimesiana*

Cyanea grimesiana ssp. *grimesiana,* a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

Little is known about the life history of this plant. On Molokai, flowering plants have been reported in July and August. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui (61 FR 53108). Currently on Maui, there are two populations with a total of five individuals in Iao Valley on State and privately owned lands (61 FR 53108; GDSI 2000; HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa,* on rocky or steep slopes of stream banks, at elevations between 350 and 945 m (1,150 and 3,100 ft). Associated plants include *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., and *Xylosma* sp. (61 FR 53108).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events that could cause extinction due to the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (61 FR 53108; USFWS 1999).

Cyanea lobata

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1999).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in.) in height (Rock 1919, Degener 1936).

Historically, *Cyanea lobata* was known from Lanai and West Maui (Lammers 1999; HINHP Database 2000). It is no longer extant on Lanai, and was rediscovered at 600 m (1,970 ft) elevation on privately owned land in Waikapu Valley on West Maui in 1982 (HINHP Database 2000). The single known plant of this species was later destroyed by a landslide triggered by heavy rains (Hobdy *et al.* 1990; HINHP Database 2000). Another population of three individuals was discovered in 1996 at 560 m (1,840 ft) elevation on privately owned land in Honokohau Valley on West Maui (GDSI 2000: HINHP Database 2000).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations of 550–915 m (1,800–3,000 ft) with *Touchardia latifolia* (olona), *Morinda trimera* (noni), and *Athyrium* sp. (akolea) (57 FR 20772; Lammers 1999; HINHP Database 2000).

The threats to this species on Maui are habitat degradation by feral pigs; depressed reproductive vigor; and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (57 FR 20772; USFWS 1997).

Cyrtandra munroi

Cyrtandra munroi, a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra* (USFWS 1995b), but not on that of *C. munroi* specifically. The pollinators of these plants have not been identified, although studies indicate that a specific pollinator may be necessary for successful pollination. Seed dispersal may be carried out by birds which eat the fruits (USFWS 1995b). Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Historically and currently, *Cyrtandra munroi* is known from Lanai and West Maui (Wagner *et al.* 1999; HINHP Database 2000). Currently on Maui, there is a single population in Kahana Valley containing more than 30 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000).

The habitat of this species is lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest, typically on rich, moist to wet, moderately steep talus slopes from 300 to 920 m (980–3,020 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include *Diospyros* sp., *Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp. (mamaki), *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp.

(naupaka), *Xylosma* sp., and other *Cyrtandra* sp. (57 FR 20772; HINHP Database 2000).

The threats to this species on Maui are from browsing and habitat disturbance by axis deer; competition with the alien plant species *Psidium cattleianum, Myrica faya* (firetree), *Leptospermum scoparium* (tea tree), *Pluchea symphytifolia* (sourbush), *Melinis minutiflora, Rubus rosifolius,* and *Paspalum conjugatum* (Hilo grass); loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic to the only known population on Maui (57 FR 20772; USFWS 1995b).

Diellia erecta

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of 3 to 9 lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in.) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Smith 1934; Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of this taxon. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, scattered locations on Maui, and various locations on the Island of Hawaii (USFWS 1999). Currently, it is only known from Molokai, Maui, and Hawaii. On Maui, there are four known populations containing 23 individual plants on or near State or privately owned lands in Iao Valley, Manawainui Plant Sanctuary, Papalaua Gulch, and Waiopai Gulch (GDSI 2000; HINHP Database 2000).

This species is found in deep shade on steep slopes or gulch bottoms in *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest at elevations between 210 and 1,590 m (700 and 5,200 ft) (HINHP Database 2000; USFWS 1999). Associated native plant species include *Nestegis* sp., *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata* (NCN), *Myrsine* sp., *Psychotria* sp., *Pleomele auwahiensis, Syzygium sandwicensis* (ohia ha), and *Wikstroemia* sp. (HINHP Database 2000; USFWS 1999).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with alien plant species, including *Blechnum occidentale* (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 56333; USFWS 1996).

Diplazium molokaiense

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

There is little known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Ainahou Valley and Maliko Gulch (East Maui) and Wailuku (Iao) Valley and Waikapu (West Maui) on Maui (HINHP Database 2000). Currently, this species is only known from Maui. Two populations with one individual each are found in Waiopai Gulch and Makawao Forest Reserve, on or near State or privately owned lands (Warshauer 1998; GDSI 2000; HINHP Database 2000).

This species occurs near water falls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest between 850 and 1,680 m (2,800 and 5,500 ft) in elevation (USFWS 1998a; HINHP Database 2000).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with alien plant taxa; decreased reproductive vigor; and extinction from randomly occurring natural events due to the small number of populations and individuals (59 FR 49025; USFWS 1998a; HINHP Database 2000).

Flueggea neowawraea

Flueggea neowawraea, a long-lived perennial and a member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed (Hayden 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Flueggea neowawraea* was known from the islands of Molokai, Oahu, Kauai, and Hawaii (HINHP Database 2000). Currently, populations are known from Kauai, Oahu, East Maui, and Hawaii. It is now known from two populations with a total of three trees on East Maui at Auwahi, and above the Lualailua Hills on the southwest slope of Haleakala, on State and privately owned lands (GDSI 2000; HINHP Database 2000; Mahealani Kaiaokamelie, (formerly with) Ulupalakua Ranch, *in litt.* 2000).

Flueggea neowawraea occurs in dry or mesic forest at elevations of 250 to 1,000 m (820 to 3,280 ft) (Hayden 1999). Associated native plant species include *Alectryon macrococcus, Bobea timonioides* (ahakea), *Charpentiera* sp. (papala), *Hibiscus* sp. (aloalo), *Melicope* sp., *Myrsine lanaiensis* (kolea), *Tetraplasandra* sp. (ohe ohe), *Psychotria mariniana* (kopiko), *Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum* (keahi), *Diospyros* sp., *Antidesma pulvinatum* (hame), *A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis* (hao), *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis,* and *Streblus pendulinus* (HINHP Database 2000).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; depressed reproductive vigor; the risk of extinction from a random environmental event due to the small number of individuals; and predation of the fruit by rats (59 FR 56333; USFWS 1999; HINHP Database 2000).

Hedyotis coriacea

Hedyotis coriacea, a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in.) long and usually 1.5 to 3 cm (0.6 to 1.2 in.) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are

longer than wide and flower buds which are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of this plant. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hedyotis coriacea* was known from Oahu and the Island of Hawaii (HINHP Database 2000). Considered extinct on all islands in recent years, this species was rediscovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, Island of Hawaii (HINHP Database 2000; USFWS 1997). Currently, only a single individual is known from West Maui on State-owned land (GDSI 2000; HINHP Database 2000).

Hedyotis coriacea is found on steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands at elevations between 470 to 2,300 m (1,540 to 7,550 ft) (HINHP Database 2000). Associated species include *Sida fallax, Gouania hillebrandii* (NCN), *Bidens menziesii, Lipochaeta livarum, Myoporum* sp. (naio), and *Schiedea menziesii* (NCN) (HINHP Database 2000).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event.

Hedyotis mannii

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. The leaves are opposite, thin in texture, and elliptic to sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Currently, no life history information is available for this species (USFWS 1996).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai (USFWS 1992). On Maui, there is a single population of approximately 20 individuals located on private land in Kauaula Valley (GDSI 2000; K. Wood *in litt.* 2000).

The population on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest between 825 and 885 m (2,700 and 2,900 ft) (K. Wood *in litt.* 2000). Associated plant species include *Machaerina* sp. (uki), *Carex meyenii* (NCN), *Phyllostegia* sp. (NCN), Hedyotis *acuminata, Cyrtandra platyphylla* (haiwale), *Cyanea* sp. (haha), and *Isachne distichophylla* (ohe) (K. Wood *in litt.* 2000).

Hedyotis mannii on Maui is threatened by landslides; competition with the alien plant species *Rubus rosifolius, Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Pluchea carolinensis* (sourbush), and *Clidemia hirta;* and the low number of individuals makes it extremely vulnerable to extinction by random naturally occurring events (USFWS 1996; K. Wood *in litt.* 2000).

Hesperomannia arborescens

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species was observed in flower from April through June and fruit during March 1993 and June 1997 (USFWS 1998). No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors.

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu (HINHP Database 2000). This species is now known from Oahu, Molokai, and Maui. There is currently one population with four individuals on East Maui, between Lanilili and Keahikauo on State and privately-owned lands (GDSI 2000; HINHP Database 2000).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest between 360 and 750 m (1,180 and 2,460 ft) in elevation, in association with *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., and *Freycinetia arborea* (HINHP Database 2000).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with alien plant taxa; extinction due to random environmental events or reduced reproductive vigor due to the small number of individuals in one remaining population; and impact by humans (59 FR 14482; HINHP Database 2000).

Hesperomannia arbuscula

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbuscula usually flowers in the spring depending on precipitation. Seeds mature in about six weeks and trees last about 10 to 15 years (USFWS 1995c). No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors.

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui (HINHP Database 2000). On Maui, this species is found in three populations, containing 13 individuals, on privately owned land in Iao and Waihee Valleys (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Hesperomannia arbuscula typically grows on slopes and ridges in mesic or wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* at elevations of 350 to 900 m (1,150 to 2,950 ft) (Wagner et al. 1999; HINHP Database 2000). Associated species include *Bidens* sp., *Tetraplasandra* sp., *Alyxia oliviformis,* and *Psychotria* sp. (HINHP Database 2000).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from alien plant species, trampling by humans, and extinction from naturally occurring random events due to the small number of populations (56 FR 55770).

Hibiscus brackenridgei

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae). The species is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular

lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length (USFWS 1999). Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and Hawaii (USFWS 1999; HINHP Database 2000). *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined (USFWS 1999). Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai (Bates 1999; USFWS 1999). *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is found in five populations, containing 38 individuals, on or near State and privately owned lands at the northern base of Puu o kali, in the Lihau section of the West Maui NAR, Kaonohua Gulch, Keokea, and south of Puu o kali (GDSI 2000; HINHP Database 2000).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry forest from 130 to 800 m (425 to 2,625 ft) in elevation, sometimes with *Erythrina sandwicensis* as the dominant tree (Geesink *et al.* 1999; HINHP Database 2000). Associated plant species include *Myoporum* sp., *Chenopodium* sp. (ahe ahea), *Achyranthes* sp. (NCN), *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Canthium odoratum, Eurya sandwicensis* (anini), *Isachne distichophylla,* and *Sida fallax* (HINHP Database 2000).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with alien plant species; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations (59 FR 56333).

Ischaemum byrone

Ischaemum byrone, a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-branching inflorescence (O'Connor 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1996).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, the Island of Hawaii, and an undocumented site on Kauai (59 FR 10305; HINHP Database 2000). Currently, this species is found on Molokai, Hawaii, and Maui. On Maui, it is known from along the coast on private and State owned lands at Kahanu Gardens, Pauwalu Point, Honokalani, Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet (GDSI 2000; HINHP Database 2000). There is a total of six populations with less than 3,000 individuals (HINHP Database 2000).

The habitat of *Ischaemum byrone* is coastal dry shrubland, occurring near the ocean among rocks or on basalt cliffs between sea level and 75 m (250 ft) (O'Connor 1999). Associated taxa include *Bidens* sp., *Fimbristylis cymosa* (Maui u aki aki), and *Scaevola sericea* (naupaka kahakai) (HINHP Database 2000).

The most serious threat to *Ischaemum byrone* is the invasion of alien plants, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardesia) and *Casuarina equisetifolia* (paina). Additionally, fire may pose a threat in areas infested with alien grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer; disturbance incurred from these ungulates further promotes the introduction and establishment of alien weeds. Some populations are also threatened from residential development (59 FR 10305; USFWS 1996; HINHP Database 2000).

Lysimachia lydgatei

Lysimachia lydgatei, a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Lysimachia lydgatei was known historically from a gulch behind Lahaina on West Maui and from Oahu. Currently, it is found only on Maui in the following locations on State-owned land in the Lihau section of the West Maui NAR: Halepohaku, Helu, and Kauaula-Olowalu (Wagner *et al.* 1999; HINHP Database 2000). The three Maui populations number approximately 240 individuals (GDSI 2000).

Lysimachia lydgatei typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros-Cheirodendron* montane forest between elevations of about 915 to 1,415 m (3,000–4,640 ft) (HINHP Database 2000). Associated vegetation includes *Lycopodium* sp. (wawae iole), *Ilex* sp., *Dodonaea viscosa, Vaccinium* sp., *Eurya sandwicensis, Styphelia tameiameiae, Coprosma* sp., *Ochrosia* sp. (holei), *Astelia* sp. (painiu), *Broussaisia arguta,* and mat ferns, such as *Dicranopteris* sp. (HINHP Database 2000).

The greatest threats to *Lysimachia lydgatei* are the threat of extinction from a random environmental event due to the small number of populations; competition with alien plant species, such as *Rubus argutus;* and fire (57 FR 20772; USFWS 1997).

Mariscus pennatiformis

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is subdivided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis,* which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1999).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements,

and limiting factors is generally unknown (USFWS 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands (HINHP Database 2000). *M. pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *M. pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. One population of approximately 30 individuals is found on State owned land near the mouth of Hanawi Stream (GDSI 2000; K. Wood *in litt.* 1999).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found at elevations between sea-level and 6 m (20 ft) on brown soil with talus in *Pandanus* coastal wet cliffs and within reach of ocean spray. Associated native plant species include: *Sadleria pallida* (amau), *Pandanus tectorius* (hala), *Lysimachia mauritiana* (kolokolo kuahiwi), *Cyperus laevigatus* (makaloa), *Eragrostis variabilis,* and *Ipomoea* sp. (morning glory) (Koyama 1999; HINHP Database 2000; K. Wood *in litt.* 1999).

Threats to the only known population of *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition from alien plant species; and extinction from random naturally occurring events (59 FR 56333; USFWS 1999).

Melicope knudsenii

Melicope knudsenii, a long-lived perennial and a member of the citrus family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown.

Historically, *Melicope knudsenii* was known only from the southeast slope of Haleakala on Maui and from Kauai (HINHP Database 2000). This species remains on Kauai, but is only found on privately owned lands at the following locations on Maui: Auwahi, Puu Mahoi, and the Kanaio area. There are three populations with a single individual at each location (GDSI 2000; HINHP Database 2000).

Melicope knudsenii grows on forested flats or talus slopes in *Nestegis-Pleomele* mixed open dry forests at elevations of about 450 to 1,220 m (1,480 to 4,000 ft) (Stone *et al.* 1999). Associated native plant species include *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* and *Xylosma hawaiiensis* (HINHP Database 2000).

Threats to *Melicope knudsenii* include habitat degradation by alien animals, such as goats and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (59 FR 9304; USFWS 1995a).

Melicope mucronulata

Melicope mucronulata, a long-lived perennial of the citrus family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in.) long and 3.5 to 6.5 cm (1.5 to 2.5 in.) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from State land with an unknown number of plants. This species was also found two years later on East Molokai (Stone *et al.* 1999; GDSI 2000; HINHP Database 2000).

Melicope mucronulata typically grows on steep, west- or north-facing, dry to mesic, forested lowland slopes at elevations of 670 to 1,070 m (2,200 to 3,500 ft) (HINHP Database 2000). Associated native species include *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* and *Dubautia linearis* (na ena e) (USFWS 1997).

The major threat to the continued existence of the only known population of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plants, particularly *Melinis minutiflora,* also pose immediate threats to this species (57 FR 20772; USFWS 1997).

Neraudia sericea

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *N. sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Neraudia sericea was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe (HINHP Database 2000). Currently, this species is known from Molokai and Maui. On Maui, three populations totaling more than four individuals are found in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui). These populations occur on State and privately owned lands (GDSI 2000; HINHP Database 2000; M. Kaiaokamelie, *in litt.* 2000).

Neraudia sericea generally occurs in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest between 670 and 1,480 m (2,200 and 4,850 ft) in elevation (Wagner *et al.* 1999; HINHP Database 2000; M. Bruegmann *in litt.* 1995). Other associated plant species include *Huperzia mannii* (NCN), *Urera glabra* (opuhe), *Cyrtandra oxybapha* (haiwale), *Cyrtandra platyphylla, Sida fallax, Diospyros* sp., *Bobea* sp., *Coprosma* sp., and *Hedyotis* sp. (HINHP Database 2000; M. Bruegmann *in litt.* 1995).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the alien plants, *Melinus minutiflora, Pennisetum clandestinum, Holcus lanatus, Cymbopogon refractus* (barbwire grass), and nonnative *Eragrostis* sp. (love grass); and a risk of

extinction due to random environmental events (59 FR 56333; USFWS 1999).

Peucedanum sandwicense

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1995a).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai (HINHP Database 2000). Discoveries in 1990 extended the known distribution of this species to the island of Oahu (USFWS 1995a). A population is known from State-owned Keopuka Islet, off the coast of Maui with a total of between 20–30 individuals (GDSI 2000; HINHP Database 2000).

This species grows in cliff habitats from sea level to above 900 m (2,950 ft) (Constance and Affolter 1999) and is associated with native species such as *Chamaesyce* sp. (akoko), *Eragrostis* sp., *Diospyros* sp., and *Metrosideros polymorpha* (USFWS 1995a; HINHP Database 2000).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock (59 FR 9304; USFWS 1995a).

Phlegmariurus mannii

Phlegmariurus mannii, a short-lived member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte (growing on the outside of other plants instead of being rooted in the ground) with clustered, delicate red stems and forked reproductive spikes; these traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; St. John 1981; Wagner and Wagner 1992).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1997).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the Island of Hawaii (HINHP Database 2000). Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State and private lands from Kaupo, Nuanualoa Stream, and Manawainui on East Maui; and from Lihau and Puu Kukui on West Maui (GDSI 2000; HINHP Database 2000). There are five populations with fewer than 300 individuals total (HINHP Database 2000).

On Maui, *Phlegmariurus mannii* typically grows in moist protected gulches on the native tree species *Metrosideros polymorpha,* and *Acacia koa,* in mesic to wet montane *M. polymorpha-A. koa* forests at elevations of 900 to 1,600 m (2,950 to 5,250 ft) (HINHP Database 2000). Associated native species include *Thelypteris* sp., *Athyrium* sp., *Styphelia tameiameiae, Cyanea* sp., *Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Dodonaea viscosa, Astelia menziesiana* (kaluaha), *Coprosma* sp., *Cheirodendron trigynum, Ilex anomala,* and *Myrsine* sp. (HINHP Database 2000).

The primary reasons for the endangerment of this species are habitat alteration by goats, cattle and pigs, and the impacts of alien plant species. Additionally, small population sizes also make the species subject to extinction due to random environmental events (57 FR 20772; USFWS 1997).

Phyllostegia mollis

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of 6, are spaced along a stem; there are 2 shorter flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1999).

Individual *Phyllostegia mollis* plants live for approximately five years. The species is known to flower in late winter and spring. Additional information on the life history of this plant, reproductive cycles, specific environmental requirements, and limiting factors is generally unknown (USFWS 1998b).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui (Wagner *et al.* 1999, HINHP Database 2000). Currently, this species is only known from Oahu and Maui. On East Maui, a single population of an unknown number of individuals remains on State and private lands in Waiopai Gulch (GDSI 2000; HINHP Database 2000).

Phyllostegia mollis typically grows on steep slopes and in gulches in diverse mesic to wet forests at an elevation of 450 to 1,830 m (1,480 to 6,000 ft) (Wagner *et al.* 1999). Associated plants include ferns, *Psychotria* sp., and *Pisonia* sp. (papala kepau) (HINHP Database 2000).

The major threats to *Phyllostegia mollis* are competition from the alien plant species *Rubus* sp. and *Schinus terebinthifolius*; and a risk of extinction of the only known population of this species on Maui due to random environmental events (56 FR 55770; USFWS 1998b).

Plantago princeps

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (USFWS 1999).

Plantago princeps is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the Island of Hawaii. *Plantago princeps* var. *anomala* is currently known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Maui, there are five populations of *Plantago princeps* var. *laxiflora,* with a total of 67 individuals, on State, Federal and privately owned lands. This variety is found on East Maui at Koolau Gap, Kaupo Gap, and Kipahulu Valley, and on West Maui in Iao Valley and Kauaula Valley (USFWS 1999; GDSI 2000; HINHP Database 2000).

On Maui, *Plantago princeps* var. laxiflora is typically found on basalt cliffs in *Metrosideros polymorpha* lowland wet forest or *Acacia koa-M. polymorpha* montane wet forest or *M. polymorpha* montane wet shrubland, from 400 to 2,050 m (1,300 to 6,700 ft)

elevation (Wagner *et al.* 1999). Associated plant species include *Eragrostis variabilis, Hedyotis formosa,* and *Dubautia plantaginea* spp. *humilis* (USFWS 1999; HINHP Database 2000).

The primary threats to *Plantago princeps* var. *laxiflora* on Maui are herbivory and habitat degradation by feral pigs and goats, and competition with various alien plant species (59 FR 56333; USFWS 1999).

Platanthera holochila

Platanthera holochila, a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai (HINHP Database 2000). Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui (HINHP Database 2000). On Maui, three populations with 28 individuals are reported on State and privately owned lands from Hanaula and the Kapaloa Gulch rim on West Maui, and from Koolau Gap on East Maui (GDSI 2000; HINHP Database 2000).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest between 1,050–2,120 m (3,440–6,960 ft) elevation. Associated native plants include *Cibotium* sp., *Coprosma ernodeoides* (nene), *Oreobolus furcatus* (NCN), *Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* sp., *Lythrum maritimum* (pukamole), *Deschampsia* sp., *Metrosideros polymorpha, Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (Maui u la ili), *Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum* (wawae iole), *Dubautia scabra* (na ena e), *Polypodium pellucidum, Gahnia gahniiformis* (NCN), and *Vaccinium reticulatum* (61 FR 53108; USFWS 1999).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and/or destruction by feral pigs; competition with alien plants; and a risk of extinction on Maui from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (61 FR 53108; USFWS 1999).

Pteris lidgatei

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in.) thick and at least 10 cm (3.9 in.) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in.) long and 20 to 45 cm (8 to 18 in.) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common (Wagner 1949). *P. lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and Waihee on West Maui (HINHP Database 2000). Currently, this species is known from Oahu and Maui. Two populations with approximately 20 individuals occur on Maui, one population on privately owned land in Kahuaula Valley and the other population on State owned land near Kahakuloa Stream (GDSI 2000; HINHP Database 2000).

This species grows on steep stream banks between 915 to 1,070 m (3,000 to 3,500 ft) elevation in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest with mosses and other ferns, including *Cibotium chamissoi* (hapuu), *Dicranopteris linearis, Elaphoglossum crassifolium* (ekaha), *Sadleria squarrosa* (amau), and *Sphenomeris chusana* (palaa) (HINHP Database 2000).

The primary threats to *Pteris lidgatei* on Maui are the alien plant *Clidemia hirta*, habitat destruction by feral pigs, and a risk of extinction due to random environmental events (59 FR 49025; USFWS 1998a).

Sanicula purpurea

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in.) tall, arising from a massive perennial stem. The stems are tufted and branched, with the lower portion of the stem lying close to the ground, while the upper portion rises. The basal leaves are numerous and leathery in texture and are kidney-shaped or circular to egg-heart-shaped, with three to seven lobes. The leaf lobes are circular to inversely egg-shaped. The leaf veins are impressed on the upper surface and prominent on the lower surface. The leaf margins bear short, sharp teeth. The basal leaf stalks are slender and abruptly sheathed at the base. The leaves are palmately three-to five-lobed. The small purple, or cream-colored with a purple tinge, flowers occur in branched terminal clusters, each of which contains six to ten flowers. Each flower cluster contains one to three perfect flowers and five to seven staminate flowers. Below the inflorescence is a series of about ten oblong or inversely lance-shaped bracts. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui (HINHP Database 2000). On West Maui, four populations totaling between 130 and 250 individuals are currently known on State and private lands in Keahikauo, Eke Crater, Violet Lake, and Puu Kukui (GSDI 2000; HINHP Database 2000).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs between 1,000 and 1,620 m (3,280 and 5,330 ft) elevation (HINHP Database 2000). Associated plant taxa include *Styphelia tameiameiae, Gahnia beechyi* (NCN), *Geranium humile* (nohoanu), *Myrsine vaccinioides* (kolea), *Viola mauiensis* (pamakani), *Argyroxiphium caliginis* (eke silversword), *Plantago pachyphylla* (laukahi kuahiwi), *Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera mauiensis* (howaiaulu), *Machaerina* sp., and *Oreobolus furcatus* (HINHP Database 2000).

Habitat degradation by feral pigs, a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations are the major threats to *Sanicula purpurea* (61

FR 53108; USFWS 1999; HINHP Database 2000).

Sesbania tomentosa

Sesbania tomentosa, a short-lived member of the legume family (Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *S. tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink et al. 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit Sesbania flowers, the majority of successful pollination is accomplished by native bees of the genus Hylaeus and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai (59 FR 56333; USFWS 1999; GDSI 2000; HINHP Database 2000). On Maui, *S. tomentosa* is known from seven populations with a total of 83 individuals. The populations are located on State-leased land at Kanaio Training Area on East Maui; and on State and privately owned lands at Olowalu Canyon, Mokolea Point, Kahakuloa, Nakalele Point, and Poelua Bay on West Maui(GDSI 2000; HINHP Database 2000; B. Hobdy *in litt.* 2000). Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State-owned seabird sanctuary (USFWS 1999; HINHP Database 2000).

Sesbania tomentosa is found in *Scaevola sericea* coastal dry shrublands on windswept slopes, sea cliffs and cinder slopes between sea level and 580 m (1,900 ft) elevation (HINHP Database 2000). Associated plant species include *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis* (pa uohi iaka), *Rhynchelytrum repens, Sida fallax,* and *Dodonaea viscosa* (USFWS 1999; HINHP Database 2000).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various alien plant species such as *Lantana camara, Waltheria* sp., and grass species; feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; USFWS 1999). Threats to *Sesbania tomentosa* on Puu Koae include habitat degradation caused by competition with various alien plant species, erosion, and trampling by cats and seabirds (P. Higashino, pers. comm. 2000).

Spermolepis hawaiiensis

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a nonsucculent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1999).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii (HINHP Database 2000). Currently, it is extant on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii (59 FR 56333; GDSI 2000; HINHP Database 2000). On Maui, there are three known populations with hundreds to thousands of individuals on State owned lands in Kuia NAR and Kanaio NAR, and on privately owned land in Lihau (USFWS 1999; GDSI 2000; HINHP Database 2000; C. Chimera, pers. comm. 2000).

Spermolepis hawaiiensis is known from shady spots in *Dodonaea viscosa* lowland dry shrubland, at elevations from 300 to 550 m (980 to 1,800 ft). Associated plant species include *Eragrostis variabilis*, *Wikstroemia* sp., *Erythrina sandwicensis*, *Diospyros* sp., *Pleomele* sp., *Lipochaeta livarum*, *Sida fallax*, *Myoporum sandwicensis*, *Santalum ellipticum*, and *Heteropogon contortus* (USFWS 1999; HINHP Database 2000; C. Chimera, pers. comm. 2000).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, and axis deer; competition with various alien plants, such as *Rhynchelytrum repens* and *Lantana camara*; and erosion, landslides, and rockslides due to natural weathering which result in the death of individual plants, as well as habitat destruction (59 FR 56333; USFWS 1999).

Vigna o-wahuensis

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, long-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and on East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui (HINHP Database 2000). Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu (HINHP Database 2000). On the State-owned island of Kahoolawe, there are a total of three populations with an unknown number of individuals in the Makaalae/Lua Kealialalo area at 140 m (460 ft) elevation, the Puhi a Nanue area near a tidal pond, and on Lua Makika (GDSI 2000; HINHP Database 2000). On Maui, there is a single population of 2 individuals on State owned land in the Kanaio Beach area of East Maui (GDSI 2000; C. Chimera, pers. comm. 2000)

On Kahoolawe, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland from 10 to 140 m (30 to 460 ft) in elevation (Geesink *et al.* 1999;

HINHP Database 2000). Associated plant species include *Sida fallax*, *Chenopodium* sp., *Dubautia menziesii*, and *Osteomeles anthyllidifolia* (HINHP Database 2000). On Maui, *Vigna o-wahuensis* occurs in dry forests around 12 m (40 ft) elevation (C. Chimera, pers. comm. 2000). Associated plant species on Maui include *Dodonaea viscosa*, *Chamaesyce* sp., *Nothocestrum latifolium*, and *Nesoluma polynesicum* (C. Chimera, pers. comm. 2000).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various alien plant species; fire; and a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations and individuals (59 FR 56333; USFWS 1999). The primary threats to this species on Maui are competition with the alien plant species *Lantana camara* and *Cenchrus ciliaris* (buffelgrass) and herbivory by axis deer and goats.

Zanthoxylum hawaiiense

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (USFWS 1996).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and southern and southwestern slopes of Haleakala on Maui. Currently, *Zanthoxylum hawaiiense* is extant on Kauai, Molokai, Maui, and Hawaii. This species is found on eastern Maui in three populations (unknown number of individuals) on private and State lands at Auwahi, Lualailua, and Kanaio (GDSI 2000; HINHP Database 2000).

Zanthoxylum hawaiiense is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, or montane dry forest, at elevations between 550 and 1,740 m (1,800 and 5,710 ft) (59 FR 10305; Stone *et al.* 1999; HINHP Database 2000). Associated species include *Metrosideros polymorpha*, *Diospyros sandwicensis*, *Pisonia* sp., *Xylosma hawaiiensis*, *Santalum ellipticum*, *Alphitonia ponderosa*, *Osteomeles anthyllidifolia*, *Alectryon macrococcus*, *Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa*, *Streblus pendulinus*, *Myrsine lanaiensis*, and *Sophora chrysophylla* (HINHP Database 2000).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the alien plant species *Melia azedarach* (chinaberry), *Lantana camara*, and *Pennisetum setaceum*; fire; human disturbance; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations (59 FR 10305; USFWS 1996).

A summary of populations and landownership for the 55 plant species on Maui and Kahoolawe is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 55 SPECIES ON MAUI AND KAHOOLAWE

Species	Number of current populations	Landownership		
		Federal	State	Private
Acaena exigua	0			
Alectryon macrococcus	6		X	X
Argyroxiphium sandwicense	7	X		X
Bidens micrantha ssp. *kalealaha*	4	X	X	
Bonamia menziesii	3		X	X
Cenchrus agrimonioides	1		X	
Centaurium sebaeoides	3		X	X
Clermontia lindseyana	2		X	X
Clermontia oblongifolia ssp. *mauiensis*	1		X	X
Clermontia samuelii	8	X	X	
Colubrina oppositifolia	2			X
Ctenitis squamigera	6		X	X
Cyanea copelandii ssp. *haleakalaensis*	3	X	X	X
Cyanea glabra	1			X
Cyanea grimesiana spp. *grimesiana*	2		X	X
Cyanea hamatiflora spp. *hamatiflora*	9	X	X	X
Cyanea lobata	1			X
Cyanea mceldowneyi	6		X	X
Cyrtandra munroi	1		X	X
Diellia erecta	4		X	X
Diplazium molokaiense	2		X	X
Dubautia plantaginea spp. *humilis*	2		X	X
Flueggea neowawraea	2		X	X
Geranium arboreum	10	X	X	X
Geranium multiflorum	9	X	X	X
Hedyotis coriacea	1		X	
Hedyotis mannii	1			X
Hesperomannia arborescens	1		X	X
Hesperomannia arbuscula	3			X
Hibiscus brackenridgei	5		X	X
Ischaemum byrone	6		X	X
Kanaloa kahoolawensis	1		X	
Lipochaeta kamolensis	1		X	X
Lysimachia lydgatei	3		X	

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 55 SPECIES ON MAUI AND KAHOOLAWE—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Mariscus pennatiformis	1		X	
Melicope adscendens	3		X	X
Melicope balloui	2	X		X
Melicope knudsenii	3			X
Melicope mucronulata	1		X	
Melicope ovalis	1	X		
Neraudia sericea	3		X	X
Peucedanum sandwicense	1		X	
Phlegmariurus mannii	5		X	X
Phyllostegia mollis	1		X	X
Plantago princeps	5	X	X	X
Platanthera holochila	3		X	X
Pteris lidgatei	2		X	X
Remya mauiensis	3		X	
Sanicula purpurea	4		X	X
Schiedea haleakalensis	2	X		
Sesbania tomentosa	8		X	X
Spermolepis hawaiiensis	3		X	X
Tetramolopium capillare	4		X	X
Vigna o-wahuensis	4		X	
Zanthoxylum hawaiiense	3		X	X

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum*, *Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum*, var. *obatifolium*, and var. *superbum*), *Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. ''from Hawaii''), *Ischaemum byrone*, *Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis*, *Plantago princeps* (as *Plantago princeps* var. *elata*, var. *laxifolia*, var. *princeps*), *Remya mauiensis*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*), were considered to be endangered; *Cyrtandra munroi*, *Diellia erecta*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and, *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera*, *Diplazium molokaiense*, *Hedyotis coriacea*, *Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis*, var. *denticulata*, and var. *queleniana*), *Pteris lidgatei*, and *Tetramolopium capillare* were considered extinct. On July 1, 1975, the Service published notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct except for *Cyanea glabra* and *Cyrtandra munroi*; additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). A summary of the status categories for the 55 plant species in the 1980–1997 notices of review can be found in Table 4(a). The 55 species were listed as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 55 PLANT SPECIES ON MAUI AND KAHOOLAWE

Species	FEDERAL REGISTER Notice of Review					
	1980	1985	1990	1993	1996	1997
Acaena exigua	C1	C1	C1			
Alectryon macrococcus	C1	C1	C1			
Argyroxiphium sandwicense ssp. *macrocephalum*	C1	C1	C1			
Bidens micrantha ssp. *kalealaha*	C1	C1	C1			
Bonamia menziesii	C1	C1	C1			
Cenchrus agrimonioides						
Centaurium sebaeoides			C1			
Clermontia lindseyana	C1	C1	C1			
Clermontia oblongifolia ssp. *mauiensis*			C1			
Clermontia samuelii						
Colubrina oppositifolia	C1	C1	C1			
Ctenitis squamigera	C1*	C1*	C1*			
Cyanea copelandii ssp. *haleakalaensis*					C	
Cyanea glabra					C	
Cyanea grimesiana spp. *grimesiana*	C1	C1		C2		
Cyanea hamatiflora spp. *hamatiflora*					C	
Cyanea lobata	C1	C1	C1			
Cyanea mceldowneyi	C1	C1	C1			
Cyrtandra munroi	C2	C2	C1			
Diellia erecta	C1	C1	C1			
Diplazium molokaiense	C1*	C1*	C1			
Dubautia plantaginea spp. *humilis*			C2	C2	C	
Flueggea neowawraea	C1	C1	C1			
Geranium arboreum	C1	C1	C1			
Geranium multiflorum	C1	C1	C1			
Hedyotis coriacea	C1	C1	C1			
Hedyotis mannii	C1	C1	C1			
Hesperomannia arborescens	C1	C1	C1			
Hesperomannia arbuscula	C1	C1	C1			
Hibiscus brackenridgei	C1	C1	C1			
Ischaemum byrone	C1	C1	C1			
Kanaloa kahoolawensis					C	
Lipochaeta kamolensis	C1	C1	C1			
Lysimachia lydgatei			C1			
Mariscus pennatiformis		C1	C1			
Melicope adscendens			3A			
Melicope balloui	C1	C1	C1*			
Melicope knudsenii	C1*	C1*	C1			
Melicope mucronulata	C1	C1	C1			
Melicope ovalis	C1	C1*	C1*			
Neraudia sericea	3A	3A	C1			
Peucedanum sandwicense	C2	C2	C2			
Phlegmariurus mannii	C1	C1	C1			
Phyllostegia mollis	C1	C1	C1			
Plantago princeps	C2	C2	C1			
Platanthera holochila	C1	C1	C1	C2		
Pteris lidgatei	C1	C1	C1			
Remya mauiensis	C1	C1				
Sanicula purpurea						
Schiedea haleakalensis		C1	C1			
Sesbania tomentosa	C1*	C1*	C1			
Spermolepis hawaiiensis			C1			
Tetramolopium capillare	C1*	C1*	C1*			
Vigna o-wahuensis	C1	C1	C1			
Zanthoxylum hawaiiense	C1	C1	C1			

Key:

C: Taxa for which the Service sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened taxa.

C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.

C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.

C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

Federal Register Notice of Review

1980: 45 FR 82479

1985: 50 FR 39525

1990: 55 FR 6183

1993: 58 FR 51144

1996: 61 FR 7596

1997: 62 FR 49398

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 55 PLANT SPECIES ON MAUI AND KAHOOLAWE

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Acaena exigua	E	05/24/91	56 FR 23842	05/15/92	57 FR 20787
Alecryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Argyroxiphium sandwicense ssp. *macrocephalum*	T	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia lindseyana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Clermontia oblongifolia ssp. *mauiensis*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Clermontia samuelii	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Colubrina oppositifolia	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanca copelandii ssp. *haleakalaensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea glabra	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea hamatiflora ssp. *hamatiflora*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyanea mceldowneyi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Diplazium molokaiense	E	06/24/93	58 FR 34241	09/09/94	59 FR 49025
Dubautia plantaginea ssp. *humilis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Geranium arboreum	E	01/23/91	56 FR 2490	05/13/92	57 FR 20589
Geranium multiflorum	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Hedyotis coriacea	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482
Hesperomannia arbuscuia	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Kanaloa kahoolawensis	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Lipochaeta kamolensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Lysimachia lydgatei	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Melicope adscendens	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope balloui	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope knudsenii	E	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Melicope ovalis	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Peucedanum sandwicense	T	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Phlegmariurus mannii	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Phyllostegia mollis	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Pteris lidgatei	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Remya mauiensis	E	10/02/89	54 FR 40447	01/14/91	56 FR 1450
Sanicula purpurea	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea haleakalensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Tetramolopium capillare	E	03/25/93	58 FR 16164	09/30/94	59 FR 49860
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305

Key:
E=Endangered
T=Threatened

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for six of these plants

(Clermontia samuelii, Cyanea copelandii ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis)* and not prudent for the other 49 plants because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations were challenged in *Conservation Council for Hawaii* v. *Babbitt.* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 49 of these 55 species. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. *Id.* At 1283—85. The court also held that we failed to balance any risks of designating critical habitat against any benefits. *Id.* For example, the court suggested that, before concluding critical habitat would not be prudent, the Service should consider whether designation might prevent an inadvertent act of destruction by educating the public.

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species *Id.* at 1286–88. In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation *Id.* at 1288. The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present *Id.* at 1285–88.

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. 24 F. Supp. 2d 1074.

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these six taxa, along with four others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001. This notice responds to the court orders.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, the State of Hawaii's Division of Forestry and Wildlife, county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggest, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we mailed letters to over 130 landowners on the islands of Maui and Kahoolawe requesting any information considered germane to the management of any of the 245 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 20 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: fencing; weeding; access to hunters or limited hunting; ungulate control; scientific research; fire control; and propagation and/or planting of native plants. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center, on January 11 and 12, 2000, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 30 people attended the two open houses.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for Kauai and Niihau plants (65 FR 66808). In that proposal, we determined that critical habitat was prudent for eleven species *(Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawraea, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, and Zanthoxylum hawaiiense)* from Kauai and/or Niihau that also occur on Maui and/or Kahoolawe.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological

features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as '' * * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements , as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under Section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the Section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redetermination

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each of the 38 species discussed in this rule for which a prudency determination has not been made previously, we analyzed the potential threats and benefits for each species in accordance with the court's order. One species, *Acaena exigua,* known only from Kauai and Maui, is no longer extant in the wild. On Kauai, this species was only known from a collection by Heinrich Wawra between 1869–1870 (Wagner *et al.* 1999). *Acaena exigua* was last collected on West Maui between April 22–24, 1997; however, no individuals were seen in two subsequent visits (1998 and 1999) to the only known location (H. Oppenheimer and S. Perlman, pers. comm. 2000). In addition, this species is not known to be in storage or under propagation. Therefore, we believe this species may be extinct. Under these circumstances,

we propose that designation of critical habitat for *Acaena exigua* is not prudent because such designation would be of no benefit to this species. If this species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available. *See* 16 U.S.C. 1532(5)(B); 50 CFR 424.12(f).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 37 plants may be vulnerable to unrestricted collection, vandalism or disturbance. However, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity that would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 37 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At least fourteen of these species are reported from federally owned lands (*Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis*) or lands under Federal jurisdiction (*Sesbania tomentosa*), or lands subject to federally funded actions such as the clearing of military ordinance on Kahoolawe (*Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis*) (see Table 3), where most actions would be subject to section 7. While a majority of these species are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that critical habitat is prudent for 37 plant species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare,* and *Vigna o-wahuensis.*

Prudency determinations have previously been made for the other 17 species discussed in this proposed rule. Therefore, a critical habitat designation is prudent for 54 of the 69 plant species historically or currently found on Maui and Kahoolawe.

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As described above in the discussion for each of the 54 species, very little is known about the specific physical and biological requirements of these species. The recovery plans that have been published for many of these species generally discuss management practices that are needed for the conservation of these species (e.g., rodent, invasive species, and ungulate control), as oppose to identifying essential areas need by the species. As a result, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are currently found, including the type of plant community and their physical location (e.g., steep rocky cliffs, talus slopes, stream banks) and elevation. Therefore, the descriptions of the physical elements of the locations of each of these species and the plant community associated with the species, as described in the **Discussion of the Plant Taxa** section above, constitute the primary constituent elements for these species.

C. Methods for Selection of Areas for Proposed Critical Habitat Designations

Critical habitat is defined as the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)). As discussed above, although we have published recovery plans for most of these species, very little is known about the specific physical and biological requirements of most of these 54 species. However, given that all of these species are either threatened or endangered with extinction, we feel that all existing sites where these plants occur needs to be designated. Therefore, we have defined primary constituent elements based on the general habitat features of the areas in which they currently occur, such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes,

stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 54 plant species.

Critical habitat may also include areas outside the geographic area presently occupied by a species upon a determination that such areas are essential to the conservation of the species (16 U.S.C. 1532(5)(A)(ii)). This may include, for example, potentially suitable unoccupied habitat that is important to the recovery of the species. However, we have not included such areas in the proposed designations for these 54 species because of our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species), and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species that would be needed, for instance, to determine where to reintroduce a species.

The historical (pre-1970) or even post-1970 records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (e.g., west Maui, Haleakala, above Lahaina). In the main Hawaiian Islands, climatic and ecological conditions such as rainfall, elevation, slope, and aspect, may vary dramatically within a relatively short distance. Therefore, a simple place name does not provide adequate information on the physical and biological features that may have occurred there or may occur there now.

The unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, currently a species may be known from northern and southern (or eastern and western) locations on an island, but not from intervening locations in similar habitat. Based on the best available information, we are unable to determine whether a species once occurred in the intervening areas and disappeared from there prior to Polynesian or European times (thus never having been collected or documented there) or simply never occurred there.

The Service considers reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. However, native plant reintroductions are difficult, and successful efforts are not common. We do not know enough about these 54 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species that may eventually provide us with additional information on the physical and biological features essential to the conservation of these species, and thus, may eventually result in identification of unoccupied habitat for future revisions of the appropriate designations.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain those physical and biological features that are essential for the survival and recovery of the 54 plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for 48 of these 54 species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (USFWS 1995a, 1995b, 1995c, 1996, 1997, 1998a, 1998b, 1999; HPPRCC 1998; HINHP Database 2000; S. Perlman, pers. comm. 2000; R. Hobdy, pers. comm. 2000; CPC *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998). Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat, as defined by the Act. While these habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed plant species, as well as other plant species of concern, it does not substitute for the more exacting regulatory process of designating critical habitat. Therefore, the proposed critical habitat designations in this proposed rule do not include all of the habitat, in particular unoccupied habitat, identified by the HPPRCC.

For these 54 plant species from Maui and Kahoolawe, currently occupied habitat was examined and critical habitat boundaries were delineated as multi-species units in such a way that locations with a high density of endangered plants could be depicted clearly. However, these multi-species critical habitat units were not homogenous or uniform in nature. Critical habitat units often encompassed a number of plant community types.

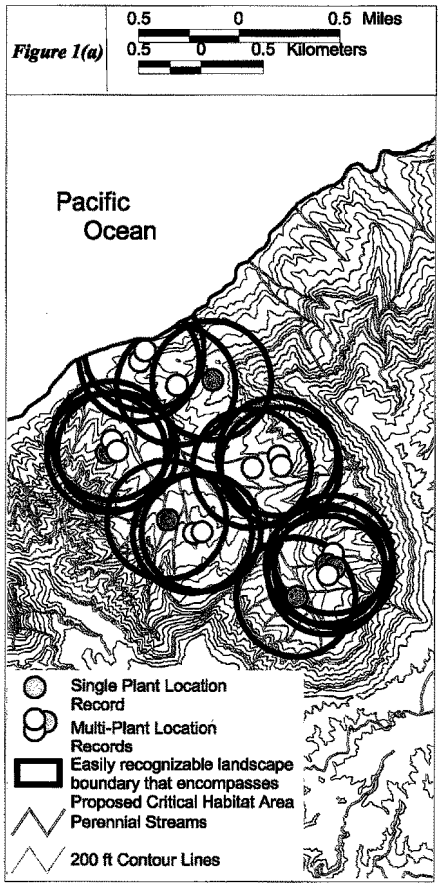
When developing critical habitat units, every current (post-1970) location of every plant specimen was delineated within a 586 m (1,924 ft) radius circle, in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant. Due to inaccuracies in mapping locations, it has been determined that the actual location of the plant specimen is within 536 m (1,760 ft) of the center of the delineated circle. The 536 m (1,760 ft) distance is consistent with standard mapping methodology for rare species used by the HINHP (1996). An additional 50 m (164 ft) included in the delineated circle to be consistent with the guidelines identified in the recovery plans for these species for minimum-sized exclosures for rare plants (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). In cases of isolated species' locations, an area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).

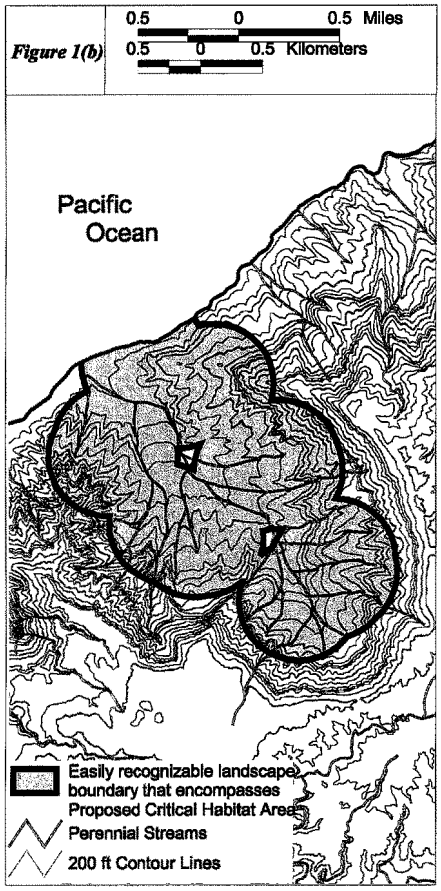
In areas with multiple species locations, critical habitat units were developed as follows.

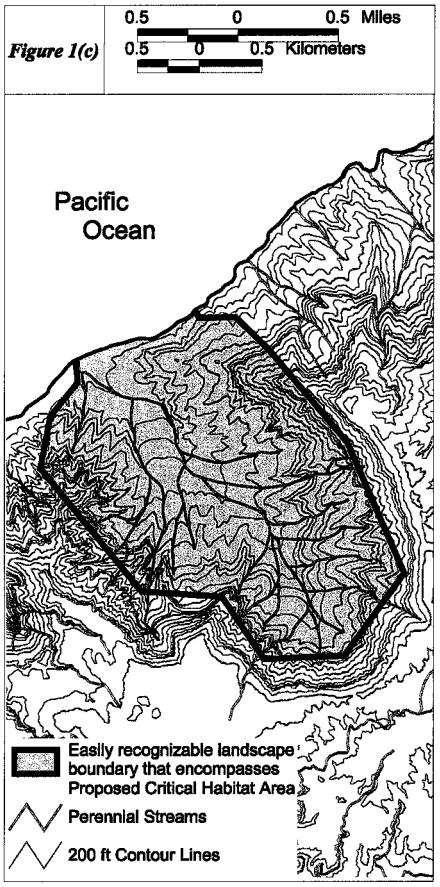
- Known current locations of each species were delineated using the guidelines explained above (Figure 1(a)).
- The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).
- Unit area boundaries were delineated to follow significant topographic features (50 CFR 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).

This delineation method was used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 54 species.

Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, these features or structures would not be included in the critical habitat designation.







All currently occupied sites containing one or more of the primary constituent elements were first evaluated to determine if the site was essential to the conservation of the listed plant species. If the site was considered essential to the conservation of any of these 54 plant species, the site was then examined to determine if additional special management considerations or protection is required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, Division of Forestry and Wildlife (DOFAW) planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (i.e., county, state, or Federal government holdings) and private landowner on Maui and Kahoolawe with a known occurrence of one of the 54 species was contacted by mail. We reviewed all information received during the public comment period held in response to our landowner mailing and open houses held on Maui on January 11 and 12, 2000. When clarification was required

on the information provided to us, we followed up with a telephone contact. Lastly, because of the large amount of land on Maui under State of Hawaii jurisdiction, we met with staff from the Maui DOFAW office to discuss their current management for the plants on their lands. In addition, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction.

Pursuant to the definition of critical habitat, an area must also require ''special management considerations or protections.'' This is a term that originates in the definition of critical habitat in section 3 of the Act. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and manages for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) the plan provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

- The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to nonnative plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from nonnative plants have led to the decline of Hawaii's native flora (Smith 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; USFWS 1995, 1996a, 1996b, 1997, 1998, 1999; Loope *in* Mack *et al.* 1998). Ungulate activity in most areas results in an increase of nonnative plants because most of these nonnative plants are able to colonize newly disturbed areas more quickly and effectively than Hawaii's native plants (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Smith 1985; Tunison *et al.* 1992; USFWS 1995, 1996a, 1996b, 1997, 1998, 1999).
- The recommendations from the HPPRCC in their 1998 report to the Service (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved with ungulates (e.g., pigs, goats, deer, and sheep) present in Essential Habitat Areas.
- The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for 48 of the 54 species (USFWS 1995a, 1995b, 1995c, 1996, 1997, 1998a, 1998b, 1999), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants:

- Feral ungulate control;
- Nonnative plant control;
- Rodent control;
- Invertebrate pest control;
- Fire control;
- Maintenance of genetic material of the endangered and threatened plant species;
- Propagation; reintroduction and/or augmentation of existing populations into areas deemed essential for the recovery of the species;
- Ongoing management of the wild, outplanted and augmented populations;
- Maintenance of natural pollinators and pollinating systems, when known;
- Habitat management and restoration in areas deemed essential for the recovery of the species;
- Monitoring of the wild, outplanted and augmented populations;
- Rare plant surveys; and
- Control of human activities/access.

As shown in Table 3, these 54 species of plants occur on Federal, State, and private lands on the islands of Maui and Kahoolawe. In response to our two public notices, letters to the landowners, open houses, and meetings, along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, control of human access, scientific research, fire control, and propagation and/or planting of native plants.

Contractors for the U.S. Navy are clearing the state-owned island of Kahoolawe of military ordinance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Endangered Species Act, as amended, to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the proposed critical habitat units for *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis.*

Protective fencing and monitoring of the endangered plant *Sesbania tomentosa* on the leased U.S. military

lands (Hawaii Army National Guard) at Kanaio Training Area, Maui, were initially funded in 1998. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Therefore, this area has been included within the proposed critical habitat units.

Eleven species *(Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis)* are reported from U.S. National Park lands at Haleakala National Park, Maui (GDSI 2000; HINHP 2000). Two of these species, *Melicope ovalis* and *Schiedea haleakalaensis,* are currently only found in Haleakala National Park.

Haleakala National Park was established by Congress in 1916 as the Haleakala Section of Hawaii National Park. In 1960, an Act of Congress established Haleakala as an independent unit of the National Park System to preserve for visitor enjoyment and scientific study the outstanding scenic, geological, and biological resources and the natural environment of Haleakala Crater (Resources Management Division 1999). Management programs, objectives, and their implementation schedules are documented in the Park's 1999 draft *Resources Management Plan* (Resources Management Division 1999). This plan details the management issues and strategies used by the Park to protect, restore, and enhance the rare and native plants and their habitats within the park (Resources Management Division 1999). These management strategies address factors which led to the listing of the 11 species including control of, or research on, nonnative species of ungulates, rodents, invertebrates, and weeds. Management strategies for control of fire within the Park are outlined in their fire management plan (Resources Management Division 1999). In addition, habitat restoration, including propagation and outplanting of native and endangered plants, and monitoring are also included in this plan. Because the *Resources Management Plan* and the park's fire management plan provides conservation benefits to the listed species within the park and provides assurances that the plan will be effective and will continue to be implemented, these lands are not in need of special management considerations or protection. Therefore, we have determined that the Federal lands within Haleakala National Park do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat.

Twelve species *(Alectryon macrococcus, Argyroxiphium sandwicense ssp. macrocephalum, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea)* are reported from The Nature Conservancy's Waikamoi and Kapunakea Preserves which are located on the northeast slopes of Haleakala and in the West Maui mountains, respectively (The Nature Conservancy of Hawaii (TNCH) 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual conservation easements from the private landowners to TNCH and are included in the state's Natural Area Partnership (NAP) program which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year, the managing partner may notify the state that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if state funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat.§§ 195–1—195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the 12 species including control of nonnative species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and to evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and to enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extend the length of the

preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The nonnative plant control program within both preserves focuses on controlling habitat modifying nonnative plants (weeds) in intact native communities and preventing the introduction of additional alien plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are on-going. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders, and hiking participants) who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of nonnative plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of nonnative invertebrates and small mammals on native Hawaiian ecosystems is poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokawai section of the state West Maui NAR. The Conservancy currently acts as a consultant to Maui Land and Pineapple Co., managers of Puu Kukui WMA, and has a Master Cooperative Agreement with the state DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, the state's Koolau Forest Reserve, and the state Hanawi NAR. An agreement between the Division of Land and Natural Resources (DLNR), East Maui Irrigation Co., Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, The Nature Conservancy, and Haleakala National Park implementing a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi will, as much as possible, complement the objectives of the plan. The partnership agreement will be used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provided a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria for determining that an area is not in need of special management. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Seven species *(Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Hesperomannia arbuscula, Phlegmariurus mannii, Pteris lidgatei,* and *Sanicula purpurea)* are reported from the Maui Pineapple Company's Puu Kukui Watershed Management Area (Puu Kukui WMA), located in the West Maui mountains (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). At just over 8,600 acres, the Puu Kukui WMA is the largest privately-owned preserve in the State. In 1993, the Puu Kukui WMA became the first private landowner participant in the Natural Areas Partnership program. In the sixth fiscal year (1999) of the Natural Area Partnership program with the Hawaii Department of Land and Natural Resources, Puu Kukui Watershed Management Area staff is pursuing four management programs stipulated in their Long Range Management Plan with an emphasis on reducing nonnative species that immediately threaten the management area (Maui Pineapple Company 1999).

The primary management goals within Puu Kukui WMA are to (1) eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of nonnative invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed.

Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units, and allowing public hunting with State permit holders within the Puu Kukui WMA.

The nonnative plant control program within Puu Kukui WMA focuses on habitat modifying nonnative plants (weeds), prioritizing them according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects, and manual/mechanical control. Biological control of the melastome plant, *Clidemia hirta* was tried by releasing *Antiblemma acclinalis* moth larvae.

Natural resource monitoring and research address the need to track biological and physical resources of the Puu Kukui WMA and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photo points, alien species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Additionally, logistical and other support for approved research projects, interagency cooperative agreements, remote survey trips within the watershed are provided.

The management of Puu Kukui WMA meets the three criteria for determining that an area is not in need of special management (see above). Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act, and we are not proposing designation of this land as critical habitat. Should the status of this reserve change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Two plant species, *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaensis,* are reported from the upper areas of Hanawi Natural Area Reserve (HNAR) (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 7,500 acres of diverse native ecosystems and endangered forest bird habitats. Natural Area Reserves are managed by the Department of Land and Natural Resources (DLNR), except that any use must be specifically approved by the Natural Area Reserve System Commission. Natural Area Reserves are held in trust by the State and may not be alienated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. §§ 195–1—195–11). The primary goals of the HNAR are to (1) protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 2,000 acres has been fenced and pigs removed. Fences are constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on state land. The Haleakala National Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the ''middle forest unit'' (B. Evanson, pers. comm. 1999).

The nonnative plant control program within HNAR focuses on habitat modifying nonnative plants (weeds). A weed priority list has been compiled for HNAR and control and monitoring of the highest priority species are on going. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects will help locate developing populations of other priority weed species and, if necessary, removal of these populations will be conducted (DLNR 1989).

Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed and because the continued successful management of this area is assured, this area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of Hanawi NAR does not meet the definition of critical habitat in the Act, and we are not proposing designation of this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, the upper area (above 1,525 m (5,000 ft)) of Hanawi Natural Area Reserve, and Haleakala National Park are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Four species include in this proposed rule *(Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis)* are currently only found in Waikamoi Preserve and/or Haleakala National Park. Since these two areas are not in need of special management, critical habitat is not proposed for these four species. However, we are specifically soliciting comments on the appropriateness of this approach.

As described above, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. The Service supports these efforts and provides technical assistance whenever possible. In addition, we are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to these listed species. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements) should trigger revision of proposed critical habitat to exclude such lands and, if so, by what mechanism.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 50 plant species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership are shown in Tables 5(a) and 5(b). Proposed critical habitat includes habitat for 50 species predominantly in the upland areas on the eastern and western sides of Maui. Lands proposed as critical habitat have been divided into 52 units on Maui and four units on Kahoolawe. A brief description of each unit is presented below.

TABLE 5(A).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI, MAUI COUNTY, HAWAII

Unit name	County or state	Private	Federal	Total
Maui A	2 ha	47 ha	N/A	49 ha
	(5 ac)	(116 ac)	N/A	(121 ac)
Maui B	21 ha	46 ha	N/A	67 ha
	(52 ac)	(114 ac)	N/A	(166 ac)
Maui C	144 ha	0.1 ha	N/A	144.1 ha
	(357 ac)	(0.3 ac)	N/A	(357.3 ac)
Maui D	36 ha	9 ha	N/A	45 ha
	(90 ac)	(21 ac)	N/A	(111 ac)
Maui E	34 ha	45 ha	N/A	79 ha
	(83 ac)	(111 ac)	N/A	(194 ac)
Maui F	N/A	61 ha	N/A	61 ha
	N/A	(150 ac)	N/A	(150 ac)
Maui G	1 ha	N/A	N/A	1 ha
	(2 ac)	N/A	N/A	(2 ac)
Maui H	1 ha	41 ha	N/A	42 ha
	(2 ac)	(102 ac)	N/A	(104 ac)
Maui I	0.1 ha	N/A	N/A	0.1 ha
	(0.3 ac)	N/A	N/A	(0.3 ac)
Maui J	19 ha	44 ha	N/A	63 ha
	(48 ac)	(109 ac)	N/A	(157 ac)
Maui K	N/A	61 ha	N/A	61 ha
	N/A	(150 ac)	N/A	(150 ac)
Maui L	50 ha	N/A	N/A	50 ha
	(124 ac)	N/A	N/A	(124 ac)
Maui M	0.3 ha	14 ha	N/A	14.3 ha
	(0.7 ac)	(35 ac)	N/A	(35.7 ac)
Maui N	114 ha	1 ha	N/A	115 ha
	(282 ac)	(2 ac)	N/A	(284 ac)
Maui O	278 ha	N/A	N/A	278 ha
	(688 ac)	N/A	N/A	(688 ac)
Maui P	58 ha	N/A	N/A	58 ha
	(144 ac)	N/A	N/A	(144 ac)
Maui Q	759 ha	1,579 ha	N/A	2,338 ha
	(1,880 ac)	(3,911 ac)	N/A	(5,791 ac)
Maui R	0.1 ha	299 ha	N/A	299.1 ha
	(0.3 ac)	(740 ac)	N/A	(740.3 ac)
Maui S	109 ha	34 ha	N/A	143 ha
	(270 ac)	(84 ac)	N/A	(354 ac)
Maui T	391 ha	189 ha	N/A	580 ha
	(968 ac)	(468 ac)	N/A	(1,436 ac)
Maui U	104 ha	16 ha	N/A	120 ha
	(258 ac)	(40 ac)	N/A	(298 ac)
Maui V	N/A	103 ha	N/A	103 ha
	N/A	(255 ac)	N/A	(255 ac)
Maui W	67 ha	2 ha	N/A	69 ha
	(167 ac)	(5 ac)	N/A	(172 ac)
Maui X	197 ha	7 ha	N/A	204 ha
	(488 ac)	(17 ac)	N/A	(505 ac)
Maui Y	107 ha	9 ha	N/A	116 ha
	(265 ac)	(22 ac)	N/A	(287 ac)
Maui Z	60 ha	55 ha	N/A	115 ha
	(148 ac)	(136 ac)	N/A	(284 ac)
Maui Aa	74 ha	0.3 ha	N/A	74.3 ha
	(183 ac)	(0.7 ac)	N/A	(183.7 ac)
Maui Bb	12 ha	340 ha	N/A	352 ha
	(30 ac)	(842 ac)	N/A	(872 ac)
Maui Cc	N/A	117 ha	N/A	117 ha
	N/A	(290 ac)	N/A	(290 ac)
Maui Dd	N/A	213 ha	N/A	213 ha
	N/A	(528 ac)	N/A	(528 ac)
Maui Ee	130 ha	58 ha	N/A	188 ha
	(322 ac)	(144 ac)	N/A	(466 ac)
Maui Ff	119 ha	N/A	N/A	119 ha
	(295 ac)	N/A	N/A	(295 ac)
Maui Gg	177 ha	N/A	N/A	177 ha
	(438 ac)	N/A	N/A	(438 ac)
Maui Hh	117 ha	N/A	N/A	117 ha
	(290 ac)	N/A	N/A	(290 ac)
Maui Ii	879 ha	N/A	N/A	879 ha
	(2,177 ac)	N/A	N/A	(2,177 ac)
Maui Jj	93 ha	N/A	N/A	93 ha

TABLE 5(A).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI, MAUI COUNTY, HAWAII—Continued

Unit name	County or state	Private	Federal	Total
	(230 ac)	N/A	N/A	(230 ac)
Maui Kk	144 ha	N/A	N/A	144 ha
	(357 ac)	N/A	N/A	(357 ac)
Maui Ll	N/A	45 ha	N/A	45 ha
	N/A	(111 ac)	N/A	(111 ac)
Maui Mm	133 ha	34 ha	N/A	167 ha
	(329 ac)	(84 ac)	N/A	(413 ac)
Maui Nn	510 ha	182 ha	N/A	692 ha
	(1,263 ac)	(451 ac)	N/A	(1,714 ac)
Maui Oo	116 ha	N/A	N/A	116 ha
	(287 ac)	N/A	N/A	(287 ac)
Maui Pp	82 ha	31 ha	N/A	113 ha
	(203 ac)	(77 ac)	N/A	(280 ac)
Maui Qq	973 ha	N/A	N/A	973 ha
	(2,410 ac)	N/A	N/A	(2,410 ac)
Maui Rr	104 ha	11 ha	N/A	115 ha
	(258 ac)	(27 ac)	N/A	(285 ac)
Maui Ss	1,014 ha	910 ha	N/A	1,924 ha
	(2,512 ac)	(2,254 ac)	N/A	(4,766 ac)
Maui Tt	103 ha	11 ha	N/A	114 ha
	(255 ac)	(27 ac)	N/A	(282 ac)
Maui Uu	79 ha	42 ha	N/A	121 ha
	(196 ac)	(104 ac)	N/A	(300 ac)
Maui Vv	76 ha	1 ha	N/A	77 ha
	(188 ac)	(2 ac)	N/A	(190 ac)
Maui Ww	133 ha	N/A	N/A	133 ha
	(329 ac)	N/A	N/A	(329 ac)
Maui Xx	4 ha	56 ha	N/A	60 ha
	(10 ac)	(139 ac)	N/A	(149 ac)
Maui Yy	29 ha	1,089 ha	N/A	1,118 ha
	(72 ac)	(2,697 ac)	N/A	(2,769 ac)
Maui Zz	118 ha	N/A	N/A	118 ha
	(292 ac)	N/A	N/A	(292 ac)
Total	7,771.5 ha	5,802.4 ha	N/A	13,573.9 ha
	(19,248.3 ac)	(14,366.0 ac)	N/A	(33,614.3 ac)

TABLE 5 (B).—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAHOOLAWE, MAUI COUNTY, HAWAII

Unit name	County or state	Private	Federal	Total
Kahoolawe B	38 ha	N/A	N/A	38 ha
	(94 ac)	N/A	N/A	(94 ac)
Kahoolawe C	50 ha	N/A	N/A	50 ha
	(124 ac)	N/A	N/A	(124 ac)
Kahoolawe D	114 ha	N/A	N/A	114 ha
	(282 ac)	N/A	N/A	(282 ac)
Total	207 ha	N/A	N/A	207 ha
	(512 ac)	N/A	N/A	(512 ac)

Descriptions of Critical Habitat Units

Maui A

The proposed Maui A provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 49 ha (121 ac). The lands contained within this unit are owned by Maui County and a private entity. The natural feature found in this unit is Nakalele Point.

Maui B

The proposed Maui B provides critical habitat for one species: *Sesbania tomentosa.* This unit contains a total of 67 ha (166 ac). The lands contained within this unit are owned by the State and a private entity. The natural features found in this unit are Keawalua, Corral, Akaluanui, and Akhluaiki. This area is bound on the north by Poelua Bay.

Maui C

The proposed Maui C provides critical habitat for one species: *Sesbania tomentosa.* This unit contains approximately 144 ha (357 ac). The land contained within this unit is predominately owned by the State, with a very small portion privately owned. The natural features found in this unit are Mokolea Point, portions of Alapapa Gulch, Papanalahoa Point, and Kaikaina.

Maui D

The proposed Maui D provides critical habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa.* This unit contains 45 ha (111 ac). The lands contained within this unit are owned by the State and a private entity. The natural features

found in this unit are Kahakuloa Head, Puu Koae, and Puu Kahulianapa. This unit is bound on the west by Kahakuloa Bay, on the southwest by Kahakuloa town, and on the east by Mahinanui.

Maui E

The proposed Maui E provides critical habitat for one species: *Centaurium sebaeoides.* This unit contains a total of 79 ha (194 ac). The lands contained within this unit are owned by State and private owners. The natural features found in this unit are portions of Makamakaole Stream, Lahoole and Waiokila Gulch.

Maui F

The proposed Maui F provides critical habitat for one species: *Centaurium sebaeoides.* This unit contains a total of 61 ha (150 ac). The land contained within this unit is owned solely by a private owner. The natural feature found in this unit is Kupaa Gulch.

Maui G

The proposed Maui G provides critical habitat for two species: *Ischaemum byrone* and *Peucedanum sandwicense.* This unit contains a total of 1 ha (2 ac). The land contained within this unit is owned by the State. This unit is the entire Keopuka Islet.

Maui H

The proposed Maui H provides critical habitat for one species: *Ischaemum byrone.* This unit contains a total of 42 ha (104 ac). The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Pauwalu Point, Paepaemoana Point, and Waianu.

Maui I

The proposed Maui I provides critical habitat for one species: *Ischaemum byrone.* This unit contains a total of 0.1 ha (0.3 ac). The land contained within this unit is owned by the State. This unit is Moku Huki.

Maui J

The proposed Maui J provides critical habitat for one species: *Mariscus pennatiformis.* This unit contains a total of 63 ha (157 ac). The lands contained within this unit are owned the State and private owners. The natural feature found in this unit is Hanawi Stream.

Maui K

The proposed Maui K provides critical habitat for one species: *Ischaemum byrone.* This unit contains a total of 61 ha (150 ac). The land contained within this unit is owned solely by private owners. The natural feature found in this unit is Kalahu Point.

Maui L

The proposed Maui L provides critical habitat for one species: *Ischaemum byrone.* This unit contains a total of 50 ha (124 ac). The land contained within this unit is owned by the State. The natural features found in this unit are portions of Keakulikuli Point, Kapukaulua, Pukaulua Point and Waianapanapa Cave. This unit is bound on the east by Keauaiki and Pailoa Bays.

Maui M

The proposed Maui M provides critical habitat for one species: *Ischaemum byrone.* This unit contains a total of 14.3 ha (35.7 ac). The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Kauiki Head.

Maui N

The proposed Maui N provides critical habitat for one species: *Lipochaeta kamolensis.* This unit contains a total of 115 ha (284 ac). The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Kepuni Gulch.

Maui O

The proposed Maui O provides critical habitat for two species: *Bonamia menziesii* and *Hibiscus brackenridgei.* This unit contains a total of 278 ha (688 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is Puu o kali.

Maui P

The proposed Maui P provides critical habitat for one species: *Clermontia oblongifolia* ssp. *mauiensis.* This unit contains a total of 58 ha (144 ac) and is found in the State's Honokowai section of the West Maui NAR and the West Maui Forest Reserve. The land contained within this unit is owned solely by the State. The natural feature found in this unit is a portion of Amalu Stream.

Maui Q

The proposed Maui Q provides critical habitat for 15 species: *Alectryon macrococcus, Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis mannii, Hesperomannia arbuscula, Lysimachia lydgatei, Phlegmariurus mannii, Plantago princeps, Pteris lidgatei, Sanicula purpurea* and *Tetramolopium capillare.* This unit contains a total of 2,338 ha (5,791 ac) and is found in the State's Lihau and Panaewa sections of the West Maui NAR and the West Maui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are portions of Kahoma Stream, Kanaha Stream, Makila Stream, Launiupaku Stream, Kinihapai Stream, Ae Stream, Olowalu Stream, Nukalaloa Stream, and Poohahoahoa Stream; portions of Kahoolewa Ridge; Kauaula; Helu; Launiupoko; Lihau; Olowalu; Halepohaku; Ulaula; portions of Ukumehame Gulch and Stream; Koai; portions of the back of Iao Valley and Stream; the Needle; portions of Kapilau Ridge; Paunau; portions of Waikapu Valley; and Hanaula.

Maui R

The proposed Maui R provides critical habitat for two species: *Hesperomannia arbuscula* and *Sanicula purpurea.* This unit contains a total of 299.1 ha (740.3 ac). The lands contained within this unit are owned by a private owner and the State. The natural feature found in this unit is a portion of Waihee River.

Maui S

The proposed Maui S provides critical habitat for one species: *Sanicula purpurea.* This unit contains a total of 143 ha (354 ac). The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are Kahakuloa, portions of Kahakuloa Stream and Hulupueo Stream, and Keahikauo.

Maui T

The proposed Maui T provides critical habitat for five species: *Ctenitis squamigera, Diellia erecta, Neraudia sericea, Platanthera holochila,* and *Remya mauiensis.* This unit contains a total of 580 ha (1,436 ac) and is found in the State's West Maui Forest Reserve and Manawainui Plant Sanctuary. The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are portions of Pohakea Gulch, Kaonehua Gulch, Papalaua Gulch, and Manawainui Gulch; portions of Ukumehame; Hanaulaiki; Polanui; and Puu Anu.

Maui U

The proposed Maui U provides critical habitat for one species: *Spermolepis hawaiiensis.* This unit contains a total of 120 ha (298 ac). The lands contained within this unit are

owned by the State and a private land owner. The natural feature found in this unit is a portion of Kanaha Stream.

Maui V

The proposed Maui V provides critical habitat for one species: *Hibiscus brackenridgei.* This unit contains a total of 103 ha (255 ac). The land contained within this unit are owned solely by private owners. The natural features found in this unit are portions of Kaunoahua ridge, portions of Paleaahu Gulch, and portions of Kaonohua Gulch.

Maui W

The proposed Maui W provides critical habitat for two species: *Phlegmariurus mannii* and *Sanicula purpurea.* This unit contains a total of 69 ha (172 ac) and is found in the State's Kahakuloa section of the West Maui NAR. The lands contained within this unit are owned by the State and a private land owner. The natural features found in this unit are Violet Lake and a portion of Kapuloa Stream.

Maui X

The proposed Maui X provides critical habitat for four species: *Hedyotis coriacea, Hibiscus brackenridgei, Sesbania tomentosa,* and *Spermolepis hawaiiensis.* This unit contains a total of 204 ha (505 ac) and is found in the State's Lihau section of the West Maui NAR. The lands contained within this unit are owned by the State and a private owner. This unit is bound on the east by Olowalu.

Maui Y

The proposed Maui Y provides critical habitat for one species: *Cyrtandra munroi.* This unit contains a total of 116 ha (287 ac) and is found within the State's West Maui Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is a portion of Makamakaole Stream.

Maui Z

The proposed Maui Z provides critical habitat for one species: *Hesperomannia arborescens.* This unit contains a total of 115 ha (284 ac) and is found within the State's Kahakuloa section of the West Maui NAR and the West Maui Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural features found in this unit are portions of Makamakaole Stream, portions of Huluhulupueo Stream, and Lanilili.

Maui Aa

The proposed Maui Aa provides critical habitat for one species: *Pteris lidgatei.* This unit contains a total of 74.3 ha (183.7 ac) and is found within the State's Kahakuloa section of the West Maui NAR. The lands contained within this unit are owned privately and by the State. The natural features found in this unit are Kahakuloa and Honokohau.

Maui Bb

The proposed Maui Bb provides critical habitat for two species: *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi.* This unit contains a total of 352 ha (872 ac) and is located within the State's Makawao Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Haiku Uka, portions of Opana Gulch, portions of Kailua Stream, portions of Waiohiwi Gulch, and portions of Waikamoi Stream.

Maui Cc

The proposed unit Maui Cc provides critical habitat for one species: *Cyanea hamatiflora* ssp. *hamatiflora.* This unit contains a total of 117 ha (290 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Haipuaena Stream and Puohakamoa Stream.

Maui Dd

The proposed Maui Dd provides critical habitat for two species: *Cyanea hamatiflora* ssp. *hamatiflora* and *Cyanea mceldowneyi.* This unit contains a total of 213 ha (528 ac). The land contained within this unit is owned solely by a private land owner. The natural features found in this unit are portions of Puohokamoa Stream and Haipuaena Stream.

Maui Ee

The proposed Maui Ee provides critical habitat for one species: *Geranium multiflorum.* This unit contains a total of 188 ha (466 ac) and is found in the State's Koolau Forest Reserve. The lands contained within this unit are owned by the State and a private owner. The natural feature found in this unit is Puu Alaea.

Maui Ff

The proposed Maui Ff provides critical habitat for one species: *Cyanea hamatiflora* ssp. *hamatiflora.* This unit contains a total of 119 ha (295 ac) and is found in the State's Hanawi NAR and Koolau Forest Reserve. The land contained within this unit is owned by the State. The natural features found in this unit are portions of the east Wailuaiki Stream and portions of the Kopiliula Stream.

Maui Gg

The proposed Maui Gg provides critical habitat for two species: *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi.* This unit contains a total of 177 ha (438 ac) and is found within the State's Hanawi NAR. The land contained within this unit is owned by the State. The natural features found in this unit are western portions of Kuhiwa Valley and portions of Kuhiwa Stream and Mukupiui Stream.

Maui Hh

The proposed Maui Hh provides critical habitat for two species: *Clermontia samuelii* ssp. *hanaensis* and *Cyanea mceldowneyi.* This unit contains a total of 117 ha (290 ac) and is found in the State's Hanawi NAR. The land contained within this unit is owned by the State. The natural feature found in this unit is the eastern portion of Kuhiwa Valley.

Maui Ii

The proposed Maui Ii provides critical habitat for one species: *Clermontia samuelii.* This unit contains a total of 879 ha (2,177 ac) and is found in the State's Koolau and Hana Forest Reserves. The land contained within this unit is owned by the State. The natural feature found in this unit is portions of the Mokulehua Gulch.

Maui Jj

Proposed Maui Jj provides critical habitat for one species: *Phlegmariurus mannii.* This unit contains a total of 93 ha (230 ac) and is found in the State's Kipahulu Forest Reserve. The lands contained within this unit are owned by the State. The natural features found in this unit are portions of Healani Stream and western portions of Manawainui Valley.

Maui Kk

The proposed Maui Kk provides critical habitat for two species: *Phlegmariurus mannii* and *Cyanea hanatiflora* ssp. *hamatiflora.* This unit contains a total of 144 ha (357 ac) and is found within the State's Kipahulu Forest Reserve. The lands contained within this unit are owned by the State. The natural features found in this unit are northeastern portions of Manawainui Valley, Puu Ahulili, and Niniao.

Maui Ll

The proposed Maui Ll provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 45 ha (111 ac). The lands contained within this unit are owned privately. The natural feature found in this unit is a portion of Kamehaneiki Gulch.

Maui Mm

The proposed Maui Mm provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 167 ha (413 ac) and is found in the State's Kula Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are a portion of Keahuaiwi Gulch, Waiakoa, and a portion of Naalae Gulch.

Maui Nn

The proposed Maui Nn provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 692 ha (1,714 ac) and is found in the State's Kula and Kahikinui Forest Reserves. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are a portion of Kaipoioi Gulch, Kaonoulu, Waiohuli, portions of Waiohuli Gulch, and Papaanui.

Maui Oo

The proposed Maui Oo provides critical habitat for one species: *Bidens micrantha* ssp. *kalealaha*. This unit contains a total of 116 ha (287 ac). The land contained within this unit is owned by the State. The natural features found in this unit are Kahua and Kahikinui.

Maui Pp

The proposed Maui Pp provides critical habitat for one species: *Geranium arboreum*. This unit contains a total of 113 ha (280 ac) and is found in the State's Kula and Kahikinui Forest Reserves. The lands contained within this unit are owned by the State and private owners. The natural feature found in this unit is Kanaio.

Maui Qq

The proposed Maui Qq provides critical habitat for seven species: *Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Neraudia sericea, Phlegmariurus mannii*, and *Phyllostegia mollis*. This unit contains a total of 973 ha (2,410 ac) and is found in the State's Kahikinui Forest Reserve. The land contained within this unit is owned by the State. The natural features found in this unit are portions of Waiopai Gulch, Manawainui Gulch, Wailaulau Gulch, and Kapuni Gulch, and Kula.

Maui Rr

The proposed Maui Rr provides critical habitat for one species: *Alectryon macrococcus*. This unit contains a total of 115 ha (285 ac) and is found in the State's Kahikinui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Kula and portions of Panini Gulch.

Maui Ss

The proposed Maui Ss provides critical habitat for ten species: *Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Flueggea neowawraea, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense*. This unit contains a total of 1,924 ha (4,766 ac), portions of which are found in the Kanaio NAR. The land contained within this unit is owned by the State and private owners. The natural features found in this unit are Puu Ouli, Maunanu, Kalmaloo, Luapelani, Puu Mahoe, Auwahi, and Kanaio.

Maui Tt

The proposed Maui Tt provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 114 ha (282 ac). The lands contained within this unit are owned by the State and leased by the U.S. Department of Defense (Hawaii Army National Guard) for the Kanaio Training Area, and private owners. The natural features found in this unit are Pimoe and Kanaio.

Maui Uu

The proposed Maui Uu provides critical habitat for one species: *Hibiscus brackenridgei*. This unit contains a total of 121 ha (300 ac). The lands contained within this unit are owned by the State and private owners. The natural feature found in this unit is Keokea.

Maui Vv

The proposed Maui Vv provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 77 ha (190 ac). The land contained within this unit is owned by the State. The natural features found in this unit are Kamanamana, a portion of Kaloi, and a portion of Kaunauhane.

Maui Ww

The proposed Maui Ww provides critical habitat for one species: *Flueggea neowawraea*. This unit contains a total of 133 ha (329 ac). The lands contained within this unit are owned by the State. The natural feature found in this unit is a portion of the Lualailua Hills.

Maui Xx

The proposed Maui Xx provides critical habitat for one species: *Ctenitis squamigera*. This unit contains a total of 60 ha (149 ac) and is found within the State's West Maui Forest Reserve. The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are Kahana, portions of Kahanaiki Gulch, Mahinahina, and Moomoku.

Maui Yy

The proposed Maui Yy provides critical habitat for one species: *Clermontia lindseyana*. This unit contains a total of 1,118 ha (2,769 ac). The lands contained within this unit are owned by the State and private owners. The natural features found within this unit are Kamaole, Keauhou, Keonenelu, and Waihou Spring.

Maui Zz

The proposed Maui Zz provides critical habitat for one species: *Ctenitis squamigera*. This unit contains a total of 118 ha (292 ac). The lands contained within this unit are owned by the State and private owners. The natural features found in this unit are portions of Kanaha Stream, Panaewa, and Kuia.

Kahoolawe A

The proposed Kahoolawe A, the islet Puu Koae off the southern coast of Kahoolawe, provides critical habitat for one species: *Sesbania tomentosa*. This unit contains a total of 5 ha (12 ac). The land contained within this unit is owned by the State.

Kahoolawe B

The proposed Kahoolawe B provides critical habitat for one species: *Kanaloa kahoolawensis*. This unit contains a total of 38 ha (94 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is Aleale.

Kahoolawe C

The proposed Kahoolawe C provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 50 ha (124 ac). The land contained within this unit is owned by the State. The natural feature found in this unit is a tidal pond.

Kahoolawe D

The proposed Kahoolawe D provides critical habitat for one species: *Vigna o-wahuensis*. This unit contains a total of 114 ha (282 ac). The land contained within this unit is owned by the State.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on lands being proposed as critical habitat for these 50 species or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat include, but are not limited to:

(1) Activities that degrade or destroy habitat defined as a primary constituent element, including but not limited to: Overgrazing; maintenance of feral ungulates; clearing, cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire.

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected;

(3) Recreational activities that degrade vegetation; and

(4) Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 50 species is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit from critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that

their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Regulation of grazing and recreation, and federally funded silviculture/forestry projects and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Military training or similar activities of the U.S. Department of Defense (Hawaii Army National Guard) on lands under their jurisdiction;

(7) Unexploded ordinance clean-up or similar activities of the U.S. Department of Defense (Navy) or their contractors on the island of Kahoolawe;

(8) Federally funded importation of alien species for research, agriculture, and aquiculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(9) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act.;

(10) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(11) Installation and maintenance of U.S. Coast Guard navigational aids;

(12) Construction of communication sites licensed by the Federal Communications Commission;

(13) Construction activities by the U.S. Department of Interior (National Park Service); and

(14) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

All lands designated as critical habitat are within the geographical area occupied by these species. Thus, we consider all critical habitat proposed in this rule to be occupied. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Because of this, we do not expect any additional project modifications or restrictions or anticipate additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities may affect or will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503–231–2063; facsimile 503–231–6243).

Consideration of Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will have a comment period for 30 days at that time to accept comments.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

In this proposed rule, we do not propose to designate critical habitat on the private lands within Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, and on the State lands in the upper areas of Hanawi Natural Area Reserve because these areas are permanently dedicated to conservation and managed to address the threats to the plant species at issue. We believe that these areas are not in need of special management considerations or protection and, therefore, do not meet the definition of critical habitat in the Act. Since we do not believe these areas meet the definition of critical habitat, critical habitat is not proposed for the four species that are only found in Waikamoi Preserve and/or Haleakala National Park (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis).* However, we are specifically soliciting comments on the appropriateness of this approach.

The Service also invites comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from designation in the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

In determining whether an action is likely to be implemented, we will generally consider the following:

- Whether or not a management plan or agreement exists which specifies the management actions being implemented, or if to be implemented, the schedule for implementation;
- Whether there are responsible party(ies) and funding source(s) or other resources necessary to implement the

actions, with a high level of assurance that the funding will be provided; and

• The authority and long-term commitment of the party(ies) to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we would generally consider whether or not the plan is specific concerning the threats to be addressed by the management actions; whether such actions have been successful in the past; whether there are provisions for monitoring and assessment of the effectiveness of the management actions; and whether adaptive management principles have been incorporated into the plan.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Maui. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount and distribution of habitat for *Acaena exigua, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense,* and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the above 50 plant species such as those derived from non-consumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

2. If you would like to submit comments by e-mail (*mandk_crithab_pr@fws.gov*), please submit e-mail comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AH70'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address will be closed out at the termination of the public comment period.

3. You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand

including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act at this time, we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required.

The 50 plants were listed as endangered or threatened species between the years 1991 and 1999. The areas proposed for critical habitat are currently occupied by one or more of these species. Under section 7 of the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 50 PLANTS FROM MAUI AND KAHOOLAWE

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal activities protentially affected [2].	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior.	None.
Private or other non-Federal activities potentially affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 also requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience, due to the limited number of individuals and populations, and limited range, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat for any of these 50 species would also likely cause ''jeopardy'' to that species. Accordingly, the designation of currently occupied areas as critical habitat would not have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 50 plant species since their listing between 1991 and 1999. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is currently occupied.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see ''Methods for Selection of Areas for Proposed Critical Habitat Designations'') we have designated property owned by Federal and State governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Federally funded silviculture/forestry projects and research and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transportation;

(6) Military training or similar activities of the U.S. Department of Defense (Hawaii Army National Guard) on lands under their jurisdiction;

(7) Unexploded ordnance clean-up or similar activities of the U.S. Department of Defense (Navy) or their contractors on the island of Kahoolawe;

(8) Federally funded importation of alien species for research, agriculture, and aquiculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(9) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(10) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(11) Installation and maintenance of U.S. Coast Guard navigational aids;

(12) Construction of communication sites licensed by the Federal Communications Commission; and

(13) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities authorized or funded by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the protections of the Act that are triggered by listing, such as avoiding jeopardy to these species, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current State restrictions concerning take of listed threatened or endangered plant species remain in effect, and this rule would impose no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal agency that funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of these 50 plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 50 plant species would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as

amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, ''Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.''

We determined that no Tribal lands are essential for the conservation of the plant species discussed in this proposed ruler because they do not support populations or suitable habitat. Therefore, we are not proposing to designate critical habitat for these species on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, and Marigold Zoll of the Pacific Islands Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii, Melicope* (=*Pelea*) *mucronulata, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under ''FLOWERING PLANTS'' and *Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus* (=*Lycopodium,* =*Huperzia*) *mannii,* and *Pteris lidgatei* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Alectryon macrococcus.	Mahoe	U.S.A.(HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha.*	Ko'oko'olau	U.S.A.(HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bonamia menziesii	None	U.S.A.(HI)	Convolvulaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Cenchrus agrimonioides.	Kamanomano (=Sandbur, agrimony).	U.S.A.(HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides.	Awiwi	U.S.A.(HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia lindseyana.	'Oha wai	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis.*	‘Oha wai	U.S.A.(HI)	Campanulaceae	E	466	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia samuelii	‘Oha wai	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Colubrina oppositifolia.	Kauila	U.S.A.(HI)	Rhamnaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea copelandii ssp. *haleakalaensis.*	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea glabra	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana.*	Haha	U.S.A.(HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea hamatiflora ssp. *hamatiflora.*	Haha	U.S.A.(HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea lobata	Haha	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea mceldowneyi	Haha	U.S.A.(HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyrtandra munroi	Ha‘iwale	U.S.A.(HI)	Gesneriaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Dubautia plantaginea ssp. *humilis*	Na‘ena‘e	U.S.A.(HI)	Asteraceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Flueggea neowawraea.	Mehamehame	U.S.A.(HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Geranium arboreum	Hawaiian red-flowered Geranium.	U.S.A.(HI)	Geraniaceae	E	465	17.96(a)	NA
Geranium multiflorum.	Nohoanu	U.S.A.(HI)	Geraniaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis coriacea	Kio‘ele	U.S.A.(HI)	Rubiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis mannii	Pilo	U.S.A.(HI)	Rubiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	None	U.S.A.(HI)	Asteraceae	E	536	17.96(a)	NA
Hesperomannia arbuscula.	None	U.S.A.(HI)	Asteraceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei.	Ma‘o hau hele	U.S.A.(HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ischaemum byrone	Hilo ischaemum	U.S.A.(HI)	Poaceae	E	532	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Kanaloa kahoolawensis.	Kohe malama malama o kanaloa.	U.S.A.(HI)	Fabaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Lipochaeta kamolensis.	Nehe	U.S.A.(HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Lysimachia lydgatei	None	U.S.A.(HI)	Primulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Mariscus pennatiformis.	None	U.S.A.(HI)	Cyperaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Melicope adscendens.	Alani	U.S.A.(HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Melicope knudsenii	Alani	U.S.A.(HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Melicope (= *Pelea*) *mucronulata*)	Alani	U.S.A.(HI)	Rutaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A.(HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A.(HI)	Apiaceae	T	530	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mollis	None	U.S.A.(HI)	Lamiaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Plantago princeps	Laukahi kuahiwi	U.S.A.(HI)	Plantaginaceae	E	559	17.96(a)	NA
Platanthera holochila	None	U.S.A.(HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Remya mauiensis	Maui remya	U.S.A.(HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*		*
Sanicula purpurea	None	U.S.A.(HI)	Apiaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A.(HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A.(HI)	Apiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Tetramolopium capillare.	Pamakani	U.S.A.(HI)	Asteraceae	E	555	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A.(HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	A'e	U.S.A.(HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A.(HI)	Dryopteridaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A.(HI)	Aspleniaceae	E	559	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Diplazium molokaiense.	None	U.S.A.(HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Phlegmariurus (Lycopodium, =Huperzia) mannii.	Wawae'iole	U.S.A.(HI)	Lycopodiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Pteris lidgatei	None	U.S.A.(HI)	Adiantaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), add paragraph (a)(1)(i)(C) and (a)(1)(i)(D), and revise paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

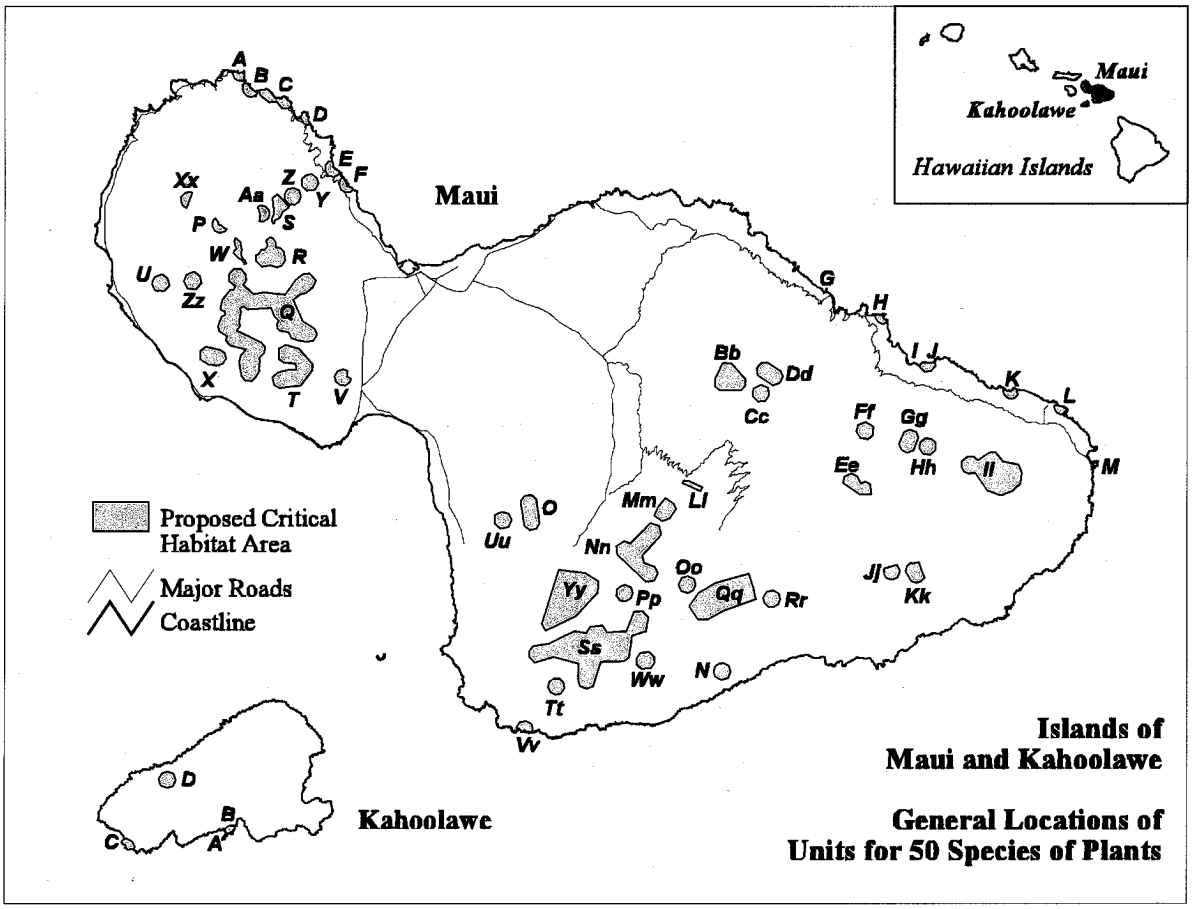
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian islands. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunication equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, the constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not included in the critical habitat designation.

* * * * *

(C) *Maui.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 52 critical habitats units designated on the island of Maui.

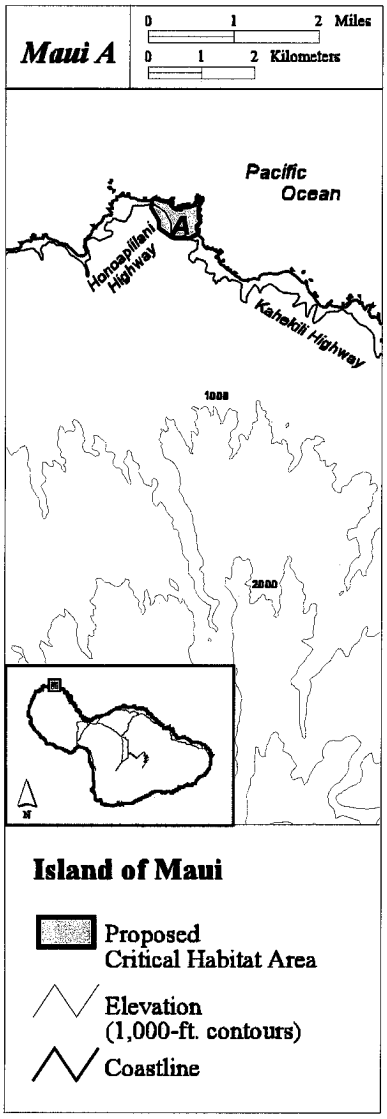
Note: Map Follows:



Critical Habitat Maui A (49 ha; 121 ac)

Unit consists of the following seven boundary points and the intermediate coastline: 750633, 2326772; 750456, 2326683; 750130, 2326703; 749888, 2326884; 749886, 2327030; 749750, 2327258; 749774, 2327433.

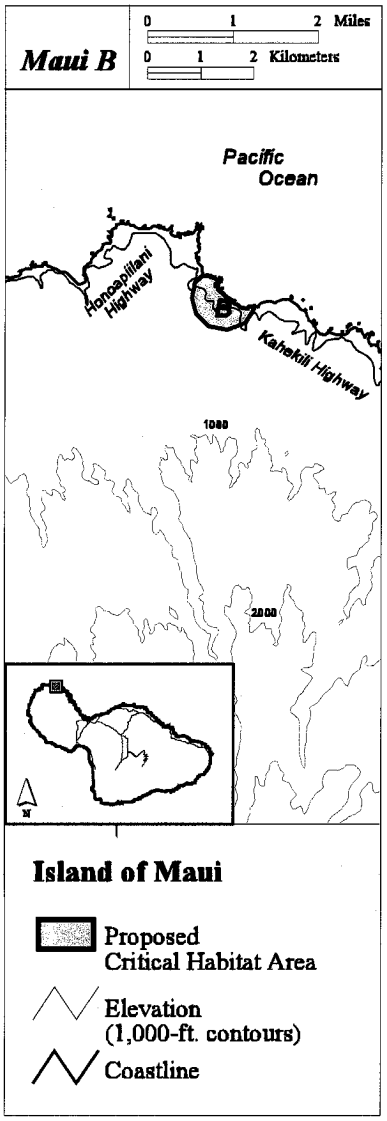
Note: Map follows:



Critical Habitat Maui B (67 ha; 166 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 751694, 2325923; 751701, 2325885; 751529, 2325612; 751186, 2325473; 750835, 2325553; 750612, 2325770; 750532, 2326078; 750587, 2326375; 750748, 2326531.

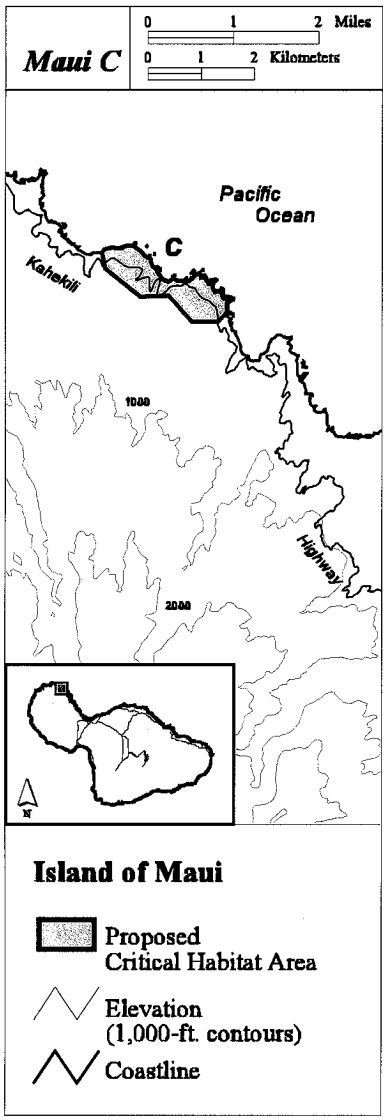
Note: Map follows:



Critical Habitat Maui C (144.1 ha; 357.3 ac)

Area consists of the following seven points and intermediate coastline: Start approximately at the coastline at UTM coordinate 754097, 2324739; 753959, 2324610; 753471, 2324616; 753034, 2325110; 752505, 2325093; 751841, 2325621; 751777, 2325920.

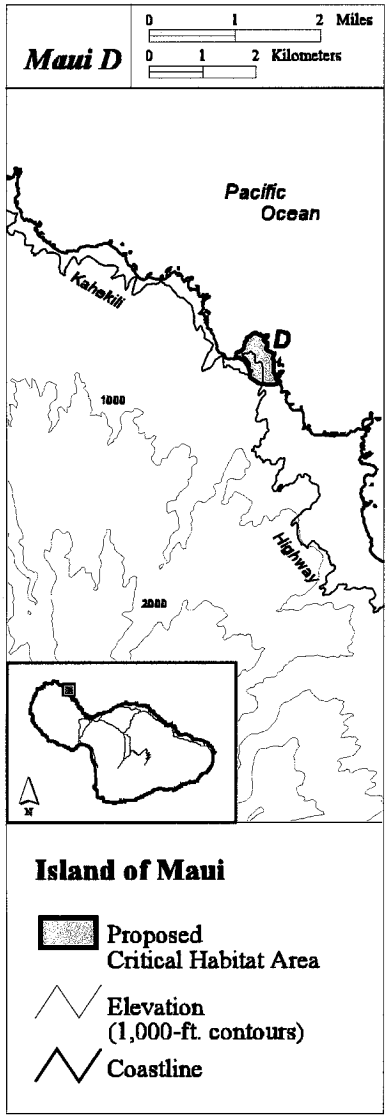
NOTE: Map follows:



Critical Habitat Maui D (45 ha; 111 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 755603, 2323416; 755458, 2323375; 755192, 2323407; 755029, 2323524; 755023, 2323623; 754989, 2323720; 754905, 2323851; 754823, 2323887; 754754, 2323893.

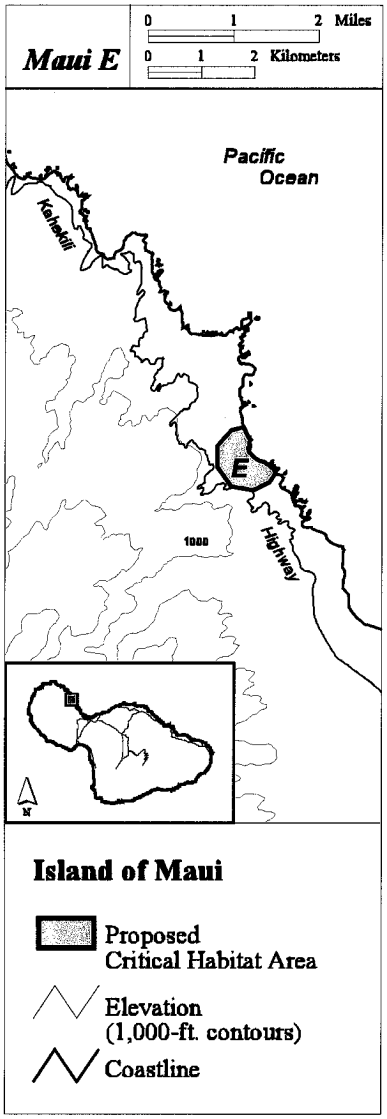
NOTE: Map follows:



Critical Habitat Maui E (79 ha; 194 ac)

Unit consists of the following eight boundary points and the intermediate coastline: 757806, 2319806; 757685, 2319625; 757377, 2319478; 756960, 2319544; 756704, 2319914; 756704, 2320323; 756970, 2320617; 757205, 2320672.

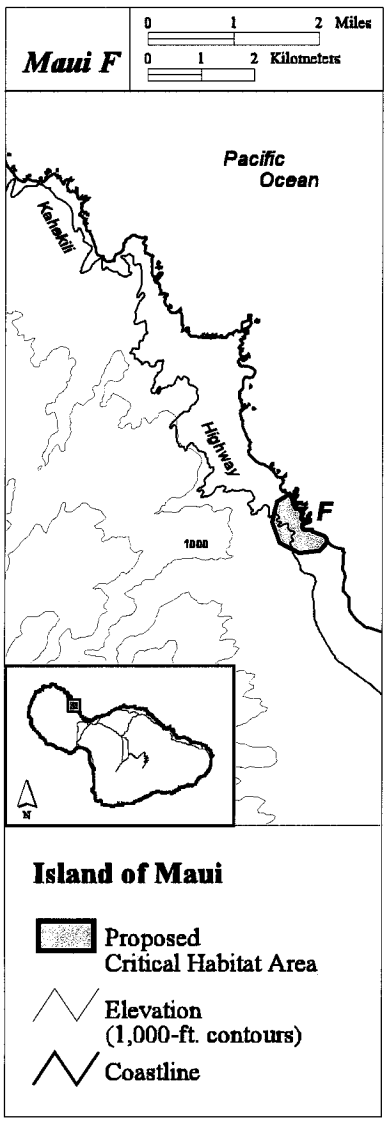
NOTE: Map follows:



Critical Habitat Maui F (61 ha; 150 ac)

Unit consists of the following seven boundary points and the intermediate coastline: 758780, 2318541; 758624, 2318378; 758239, 2318333; 757873, 2318527; 757741, 2318914; 757835, 2319306; 758062, 2319448.

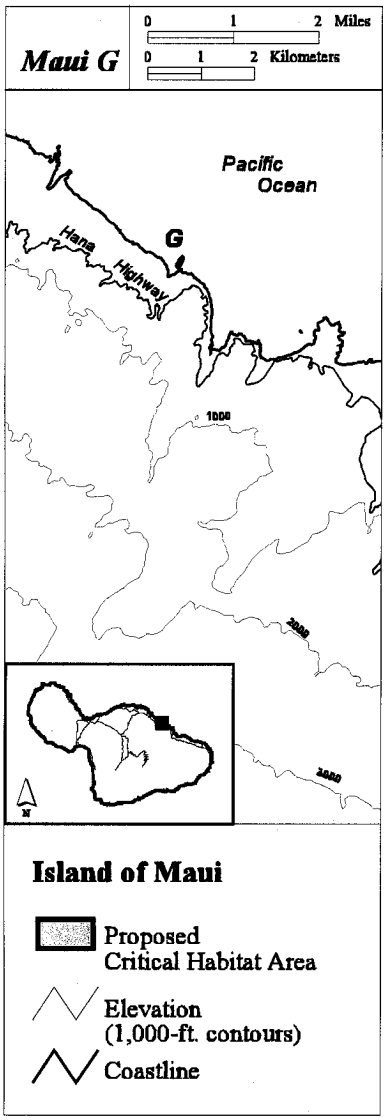
Note: Map follows:



Critical Habitat Maui G (1 ha; 2 ac)

Unit consists of the entire island, located at UTM coordinate 794211, 2310986.

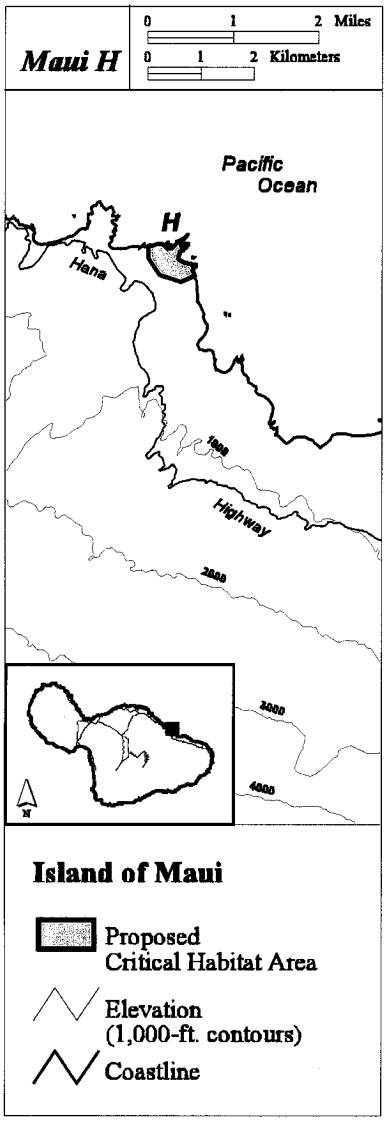
Note: Map follows:



Critical Habitat Maui H (42 ha; 104 ac)

Unit consists of the following five boundary points and the intermediate coastline: 798775, 2308545; 798511, 2308422; 798109, 2308552; 797895, 2308879; 797900, 2309107.

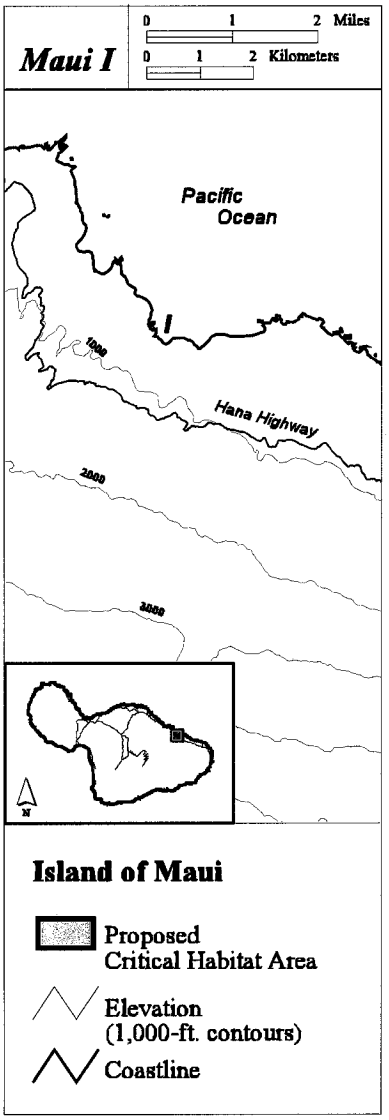
Note: Map follows:



Critical Habitat Maui I (0.1 ha; 0.3 ac)

Unit consists of the entire island, located at UTM coordinate 800254, 2305748.

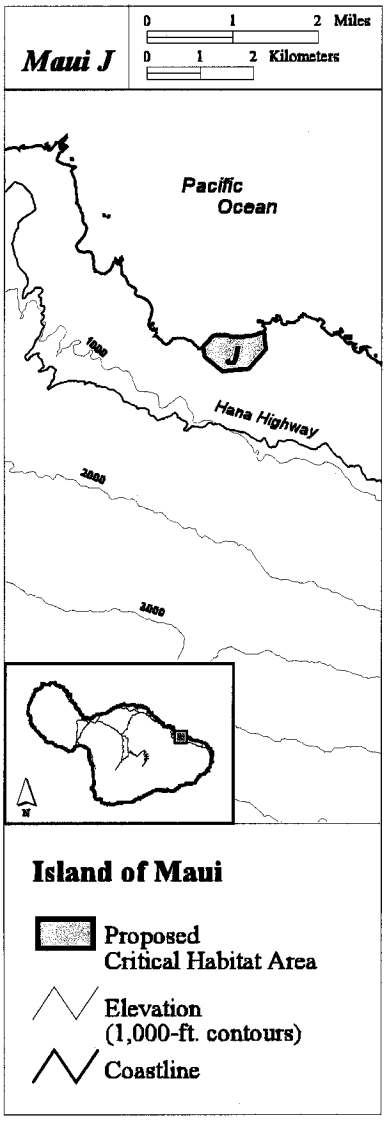
Note: Map follows:



Critical Habitat Maui J (63 ha; 157 ac)

Unit consists of the following six boundary points and the intermediate coastline: 802363, 2305610; 802394, 2305272; 802072, 2304901; 801579, 2304862; 801251, 2305132; 801206, 2305331.

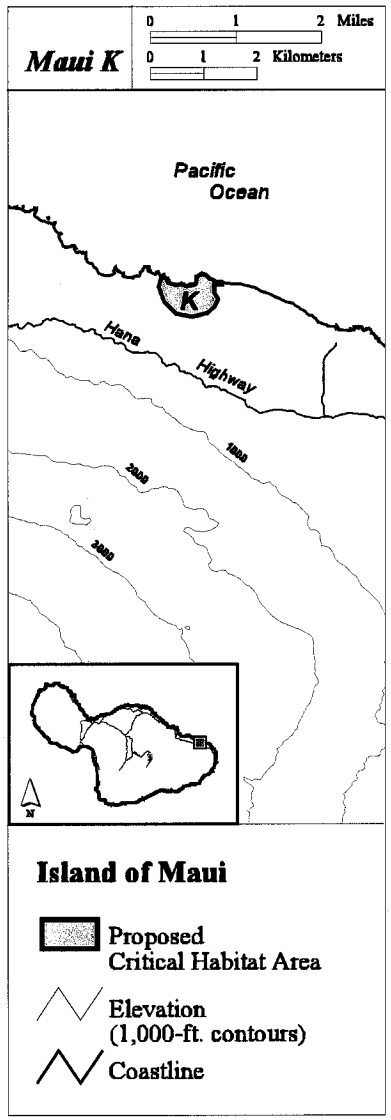
Note: Map follows:



Critical Habitat Maui K (61 ha; 150 ac)

Unit consists of the following twelve boundary points and the intermediate coastline: 808655, 2303467; 808652, 2303423; 808501, 2303430; 808499, 2303256; 808577, 2303146; 808506, 2303006; 808369, 2302880; 808087, 2302805; 807783, 2302870; 807561, 2303089; 807460, 2303384; 807518, 2303589.

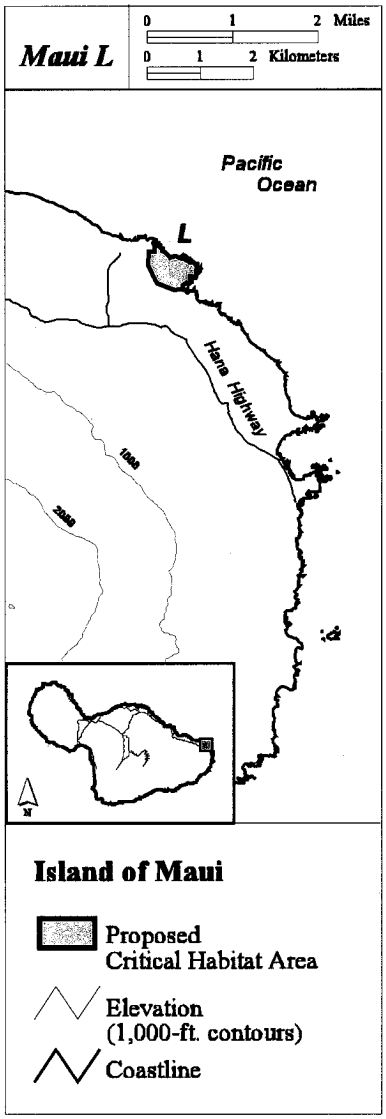
Note: Map follows:



Critical Habitat Maui L (50 ha; 124 ac)

Unit consists of the following nine boundary points and the intermediate coastline: 811990, 2301607; 811819, 2301595; 811486, 2301731; 811327, 2302067; 811331, 2302315; 811456, 2302318; 811455, 2302431; 811419, 2302481; 811458, 2302548.

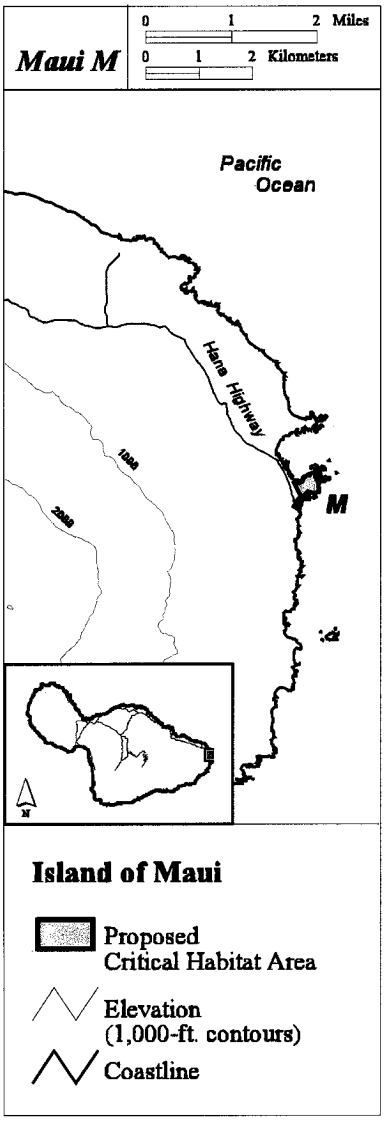
Note: Map follows:



Critical Habitat Maui M (14.3 ha; 35.7 ac)

Unit consists of the following eight boundary points and the intermediate coastline: 814158, 2297468; 814095, 2297500; 814187, 2297634; 814242, 2297672; 814116, 2297928; 814198, 2297932; 814268, 2297968; 814303, 2298064.

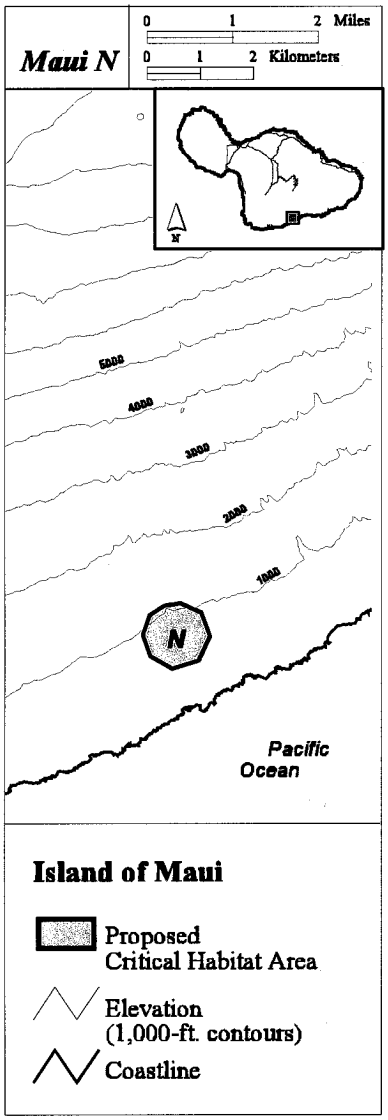
Note: Map follows:



Critical Habitat Maui N (115 ha; 284 ac)

Unit consists of the following nine boundary points: 786248, 2282907; 786554, 2282957; 786936, 2282772; 787107, 2282321; 786893, 2281864; 786401, 2281705; 785985, 2281950; 785844, 2282345; 785967, 2282728.

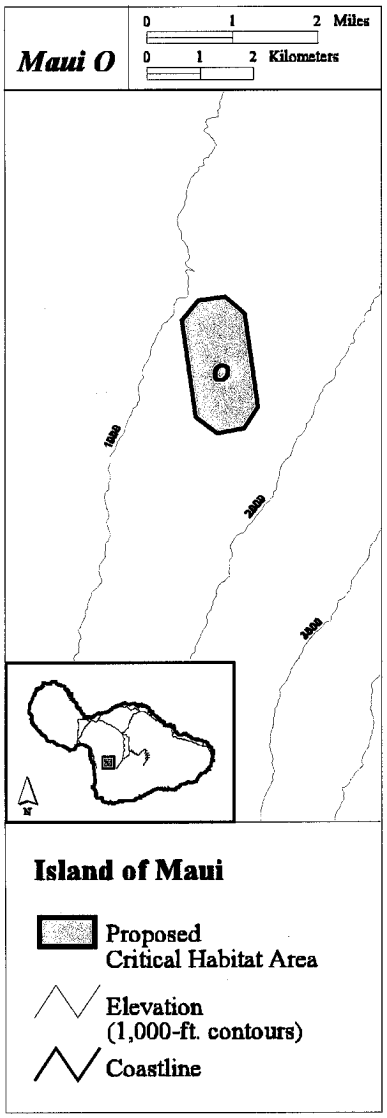
Note: Map follows:



Critical Habitat Maui O (278 ha; 688 ac)

Unit consists of the following eight boundary points: 771668, 2295517; 772176, 2295586; 772539, 2295263; 772790, 2293479; 772527, 2293084; 772026, 2292986; 771623, 2293297; 771351, 2295136.

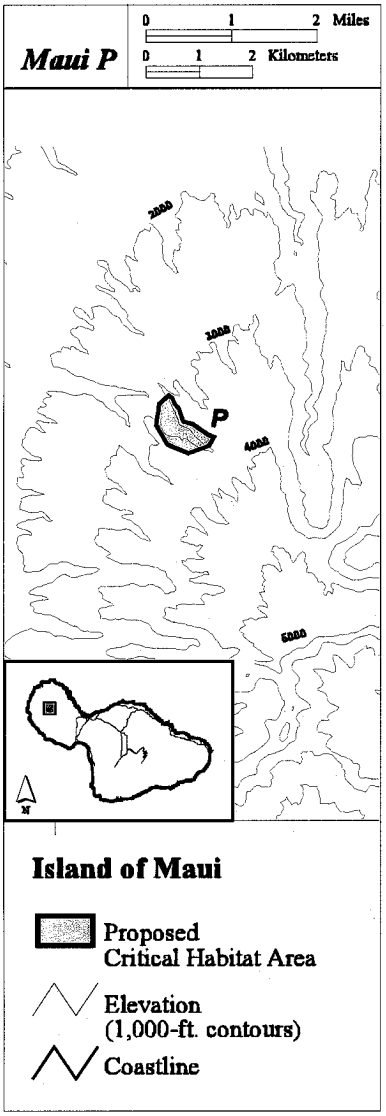
Note: Map follows:



Critical Habitat Maui P (58 ha; 144 ac)

Unit consists of the following thirteen boundary points: 748750, 2315870; 748926, 2315818; 749219, 2315615; 749336, 2315565; 749244, 2315410; 748854, 2315265; 748457, 2315426; 748247, 2315790; 748306, 2316197; 748486, 2316360; 748551, 2316304; 748584, 2316209; 748668, 2316115.

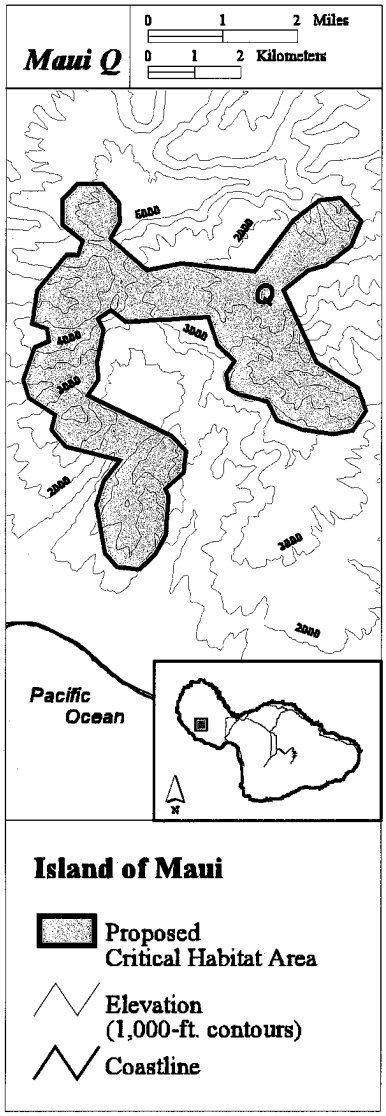
Note: Map follows:



Critical Habitat Maui Q (2,338 ha; 5,791 ac)

Unit consists of the following sixty-five boundary points: 750771, 2312124; 750790, 2311697; 750578, 2311354; 751367, 2310653; 752118, 2310799; 753695, 2310630; 754534, 2311735; 755091, 2312174; 755559, 2312225; 756008, 2311720; 755784, 2311189; 755248, 2310771; 754859, 2310651; 754315, 2310226; 755033, 2308654; 755940, 2308099; 756110, 2307598; 755825, 2307180; 755406, 2307098; 754741, 2307185; 754188, 2307390; 753983, 2307802; 753340, 2307955; 753129, 2308088; 753088, 2308412; 753261, 2308676; 752903, 2309029; 752695, 2309644; 750916, 2309529; 750598, 2309792; 750316, 2309596; 750439, 2309356; 750292, 2308660; 750320, 2308277; 750095, 2307938; 751915, 2307054; 752216, 2306733; 752165, 2306253; 751768, 2305894; 751845, 2305755; 751784, 2304903; 751556, 2304475; 751223, 2304157; 750736, 2304202; 750467, 2304503; 750289, 2305559; 750449, 2306075; 750805, 2306520; 749621, 2306816; 749314, 2307195; 749385, 2307517; 748814, 2307874; 748699, 2308271; 748949, 2308977; 749251, 2309111; 749218, 2309383; 748891, 2309495; 748997, 2310228; 749635, 2310991; 749876, 2310977; 749988, 2311296; 749540, 2311646; 749543, 2312185; 749873, 2312535; 750410, 2312543.

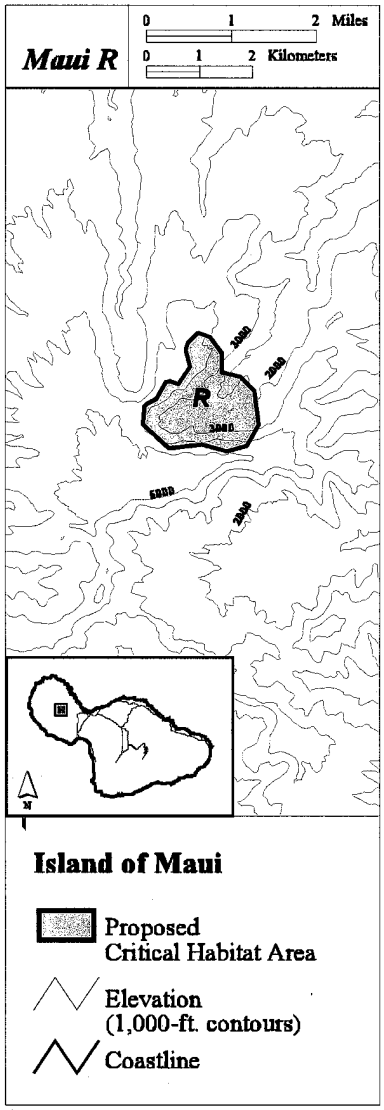
Note: Map follows:



Critical Habitat Maui R (299.1 ha; 740.3 ac)

Unit consists of the following twenty-one boundary points: 752540, 2314961; 752773, 2314883; 752997, 2314576; 752995, 2314200; 753348, 2314121; 753615, 2313849; 753691, 2313211; 753468, 2312810; 753085, 2312694; 752612, 2312832; 751992, 2312757; 751497, 2313211; 751524, 2313557; 751582, 2313614; 751746, 2313692; 751933, 2314010; 752006, 2314036; 752164, 2313975; 752394, 2314306; 752308, 2314642; 752358, 2314769.

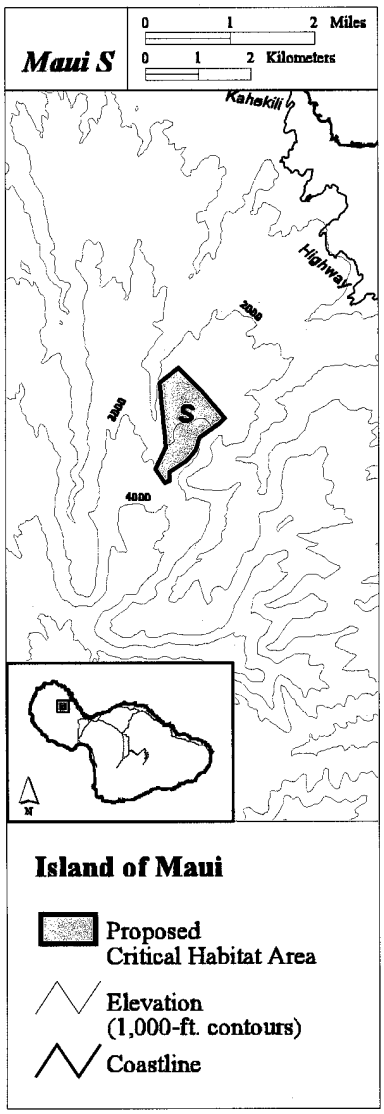
Note: Map follows:



Critical Habitat Maui S (143 ha; 354 ac)

Unit consists of the following thirteen boundary points: 752751, 2317904; 753106, 2318187; 753571, 2317718; 753990, 2317221; 753879, 2317115; 753513, 2316860; 753439, 2316618; 753273, 2316414; 752929, 2316198; 752932, 2316027; 752839, 2315991; 752670, 2316256; 752869, 2316683.

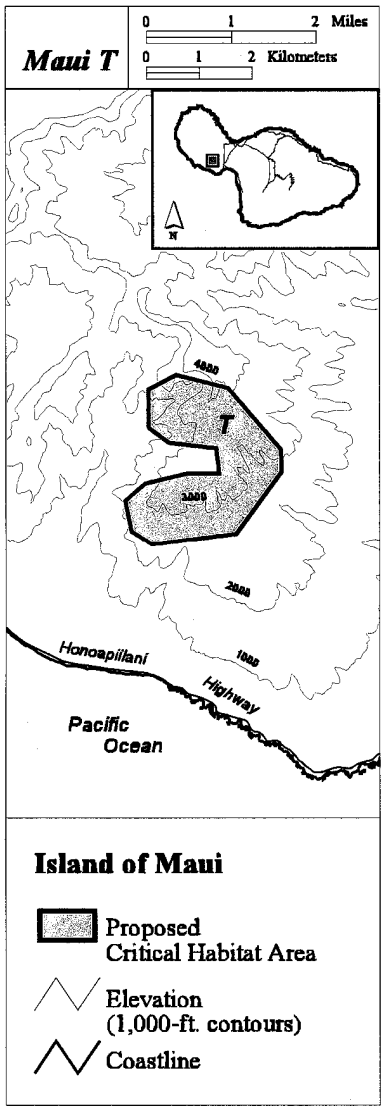
Note: Map follows:



Critical Habitat Maui T (580 ha; 1,436 ac)

Unit consists of the following fifteen boundary points: 753246, 230584; 753238, 2306579; 753759, 2306849; 754750, 2306605; 755757, 2305428; 755763, 2305006; 754900, 2303806; 753297, 2303611; 752908, 2303851; 752785, 2304448; 753174, 2304779; 753962, 2304969; 754581, 2304970; 754515, 2305458; 753623, 2305561.

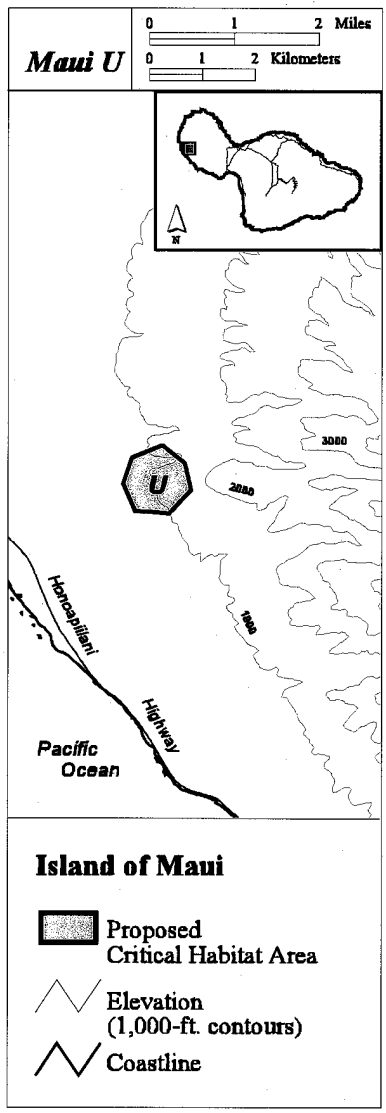
Note: Map follows:



Critical Habitat Maui U (120 ha; 298 ac)

Unit consists of the following seven boundary points: 744526, 2312185; 744948, 2311845; 745071, 2311334; 744655, 2310891; 744008, 2310932; 743776, 2311456; 743947, 2311954.

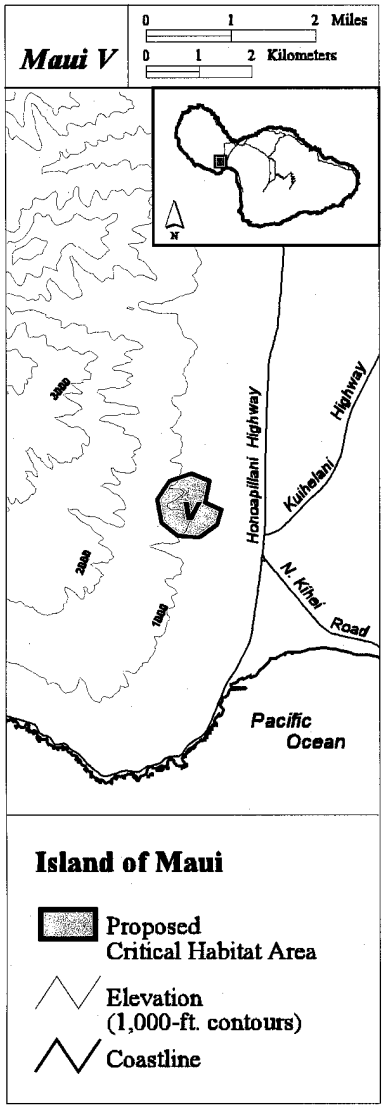
Note: Map follows:



Critical Habitat Maui V (103 ha; 255 ac)

Unit consists of the following ten boundary points: 758083, 2305035; 758421, 2304900; 758346, 2304479; 758653, 2304334; 758566, 2304050; 758222, 2303804; 757824, 2303841; 757517, 2304094; 757436, 2304539; 757665, 2304897.

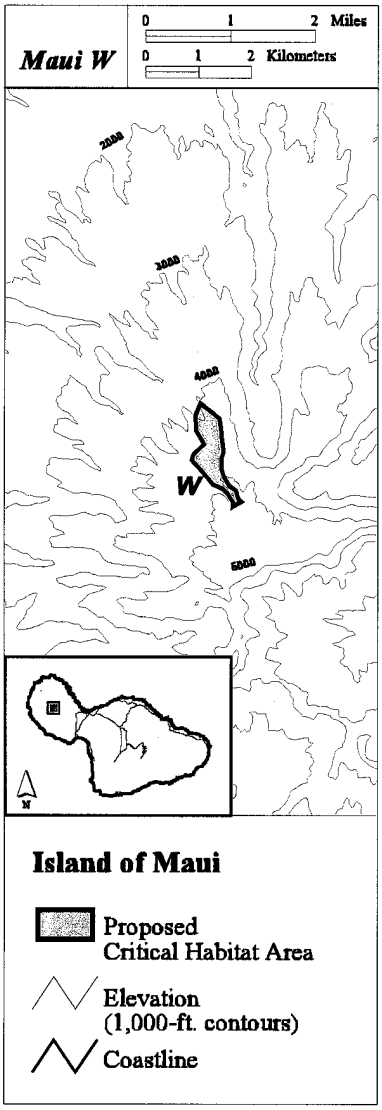
Note: Map follows:



Critical Habitat Maui W (69 ha; 172 ac)

Unit consists of the following twenty-one boundary points: 750403, 2314584; 750470, 2313939; 750431, 2313836; 750429, 2313611; 750465, 2313493; 750581, 2313305; 750705, 2313201; 750756, 2313045; 750814, 2312992; 750650, 2312902; 750660, 2312967; 750541, 2313163; 750455, 2313243; 750267, 2313325; 750046, 2313596; 749865, 2313788; 749906, 2313905; 750108, 2314098; 749945, 2314364; 749932, 2314648; 750027, 2314876.

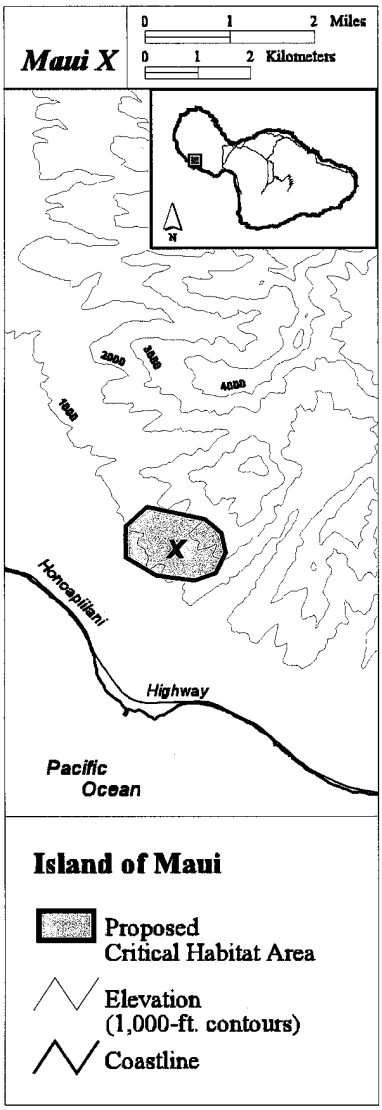
Note: Map follows:



Critical Habitat Maui X (204 ha; 505 ac)

Unit consists of the following nine boundary points: 747781, 2306743; 748893, 2306503; 749197, 2306248; 749279, 2305850; 749084, 2305460; 748688, 2305318; 747967, 2305419; 747371, 2305769; 747379, 2306377.

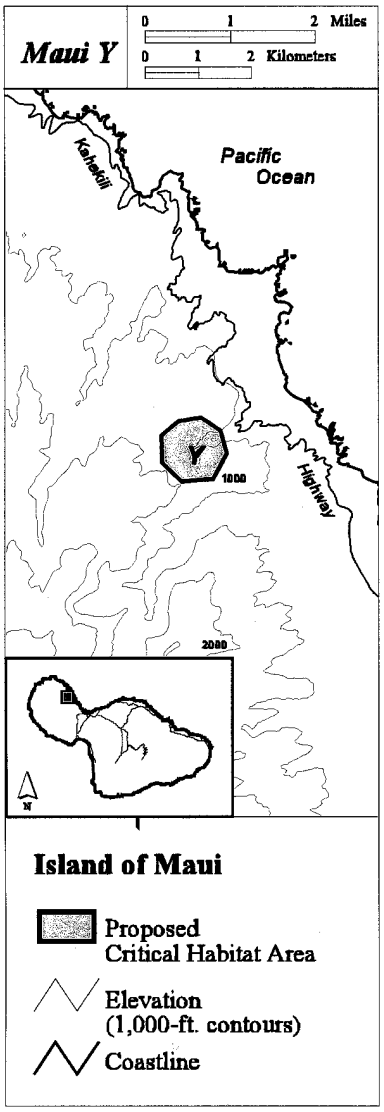
Note: Map follows:



Critical Habitat Maui Y (116 ha; 287 ac)

Unit consists of the following eight boundary points: 755267, 2319597; 755686, 2319662; 756061, 2319419; 756179, 2318978; 755912, 2318493; 755321, 2318439; 754959, 2318795; 754947, 2319319.

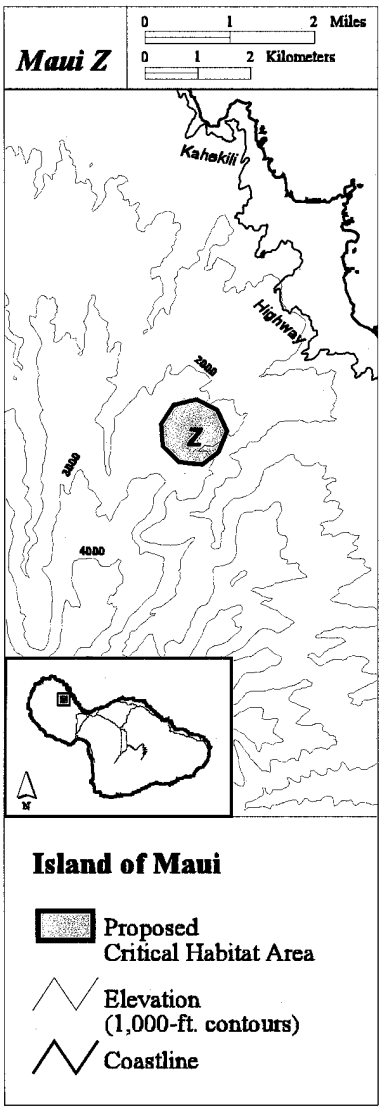
Note: Map follows:



Critical Habitat Maui Z (115 ha; 284 ac)

Unit consists of the following nine boundary points: 754334, 2318638; 754726, 2318445; 754908, 2318033; 754740, 2317636; 754431, 2317403; 754002, 2317451; 753690, 2317749; 753658, 2318167; 753894, 2318536.

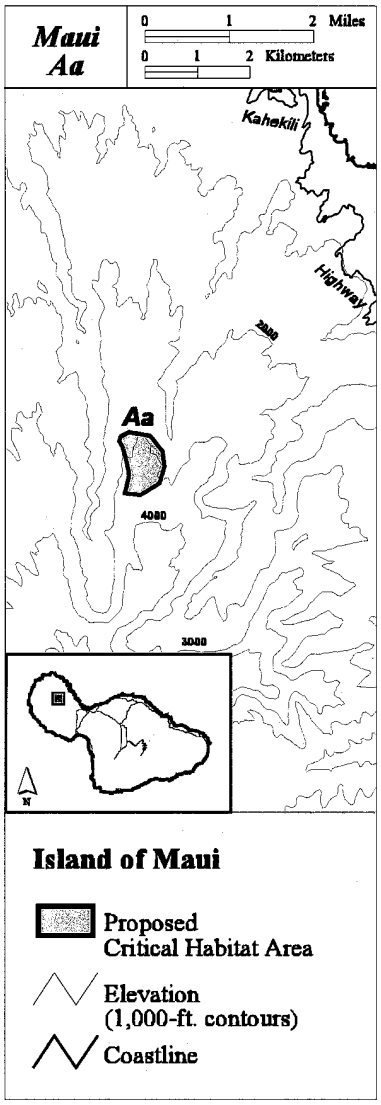
Note: Map follows:



Critical Habitat Maui Aa (74.3 ha; 183.7 ac)

Unit consists of the following twelve boundary points: 751685, 2317244; 751861, 2317323; 752265, 2317256; 752494, 2316959; 752538, 2316661; 752442, 2316337; 752076, 2316112; 751770, 2316146; 751858, 2316497; 751827, 2316694; 751730, 2317048; 751671, 2317144.

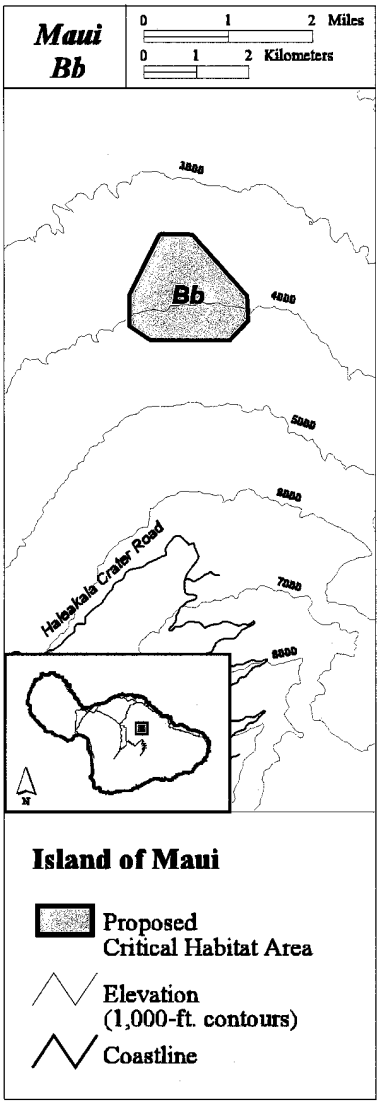
Note: Map follows:



Critical Habitat Maui Bb (352 ha; 872 ac)

Unit consists of the following eight boundary points: 786494, 2305496; 787116, 2305481; 788158, 2304306; 788186, 2303838; 787832, 2303458; 786315, 2303459; 785903, 2303731; 785907, 2304339.

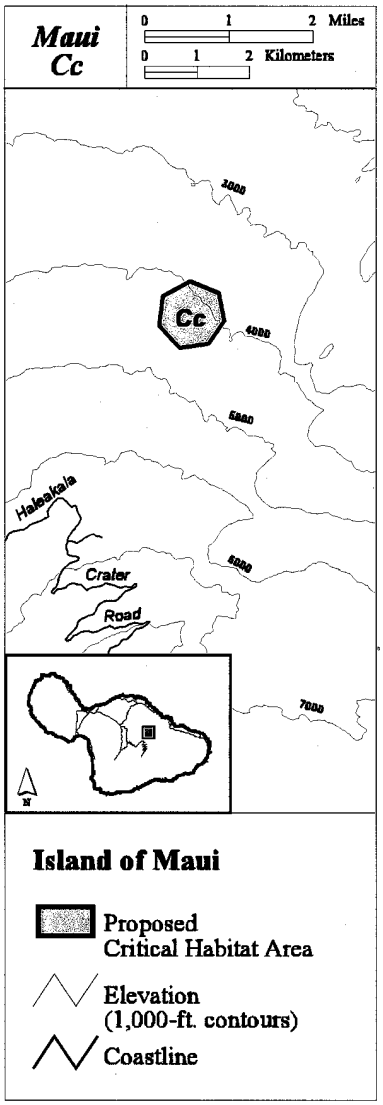
Note: Map follows:



Critical Habitat Maui Cc (117 ha; 290 ac)

Unit consists of the following seven boundary points: 789332, 2303848; 789877, 2303630; 789978, 2303093; 789690, 2302650; 789130, 2302572; 788734, 2302992; 788804, 2303568.

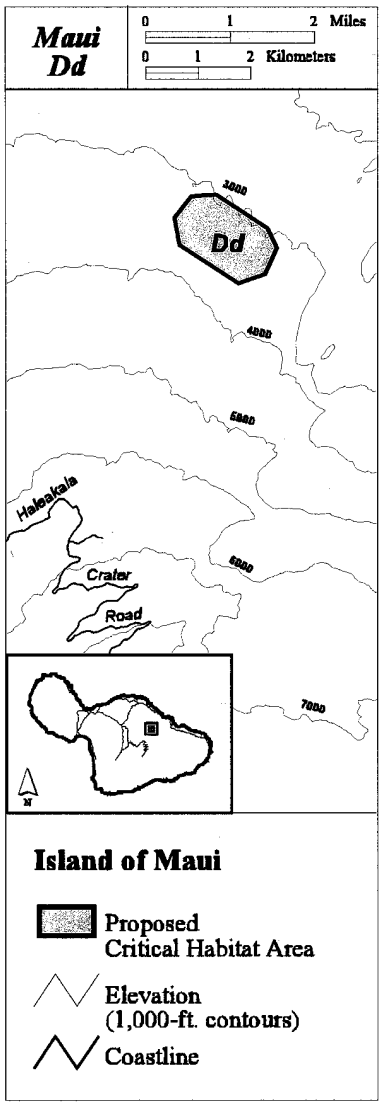
Note: Map follows:



Critical Habitat Maui Dd (213 ha; 528 ac)

Unit consists of the following eight boundary points: 789799, 2305535; 790790, 2304877; 790965, 2304501; 790745, 2304009; 790234, 2303824; 789107, 2304563; 789014, 2305084; 789332, 2305496.

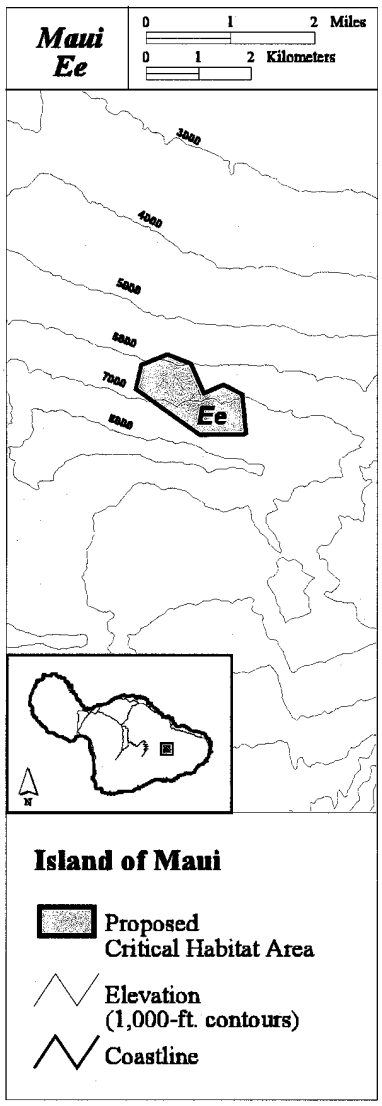
Note: Map follows:



Critical Habitat Maui Ee (188 ha; 466 ac)

Unit consists of the following eleven boundary points: 796711, 2295634; 796710, 2295635; 795482, 2296515; 795599, 2296973; 796086, 2297177; 796536, 2297003; 796794, 2296434; 797172, 2296594; 797523, 2296403; 797594, 2295645.

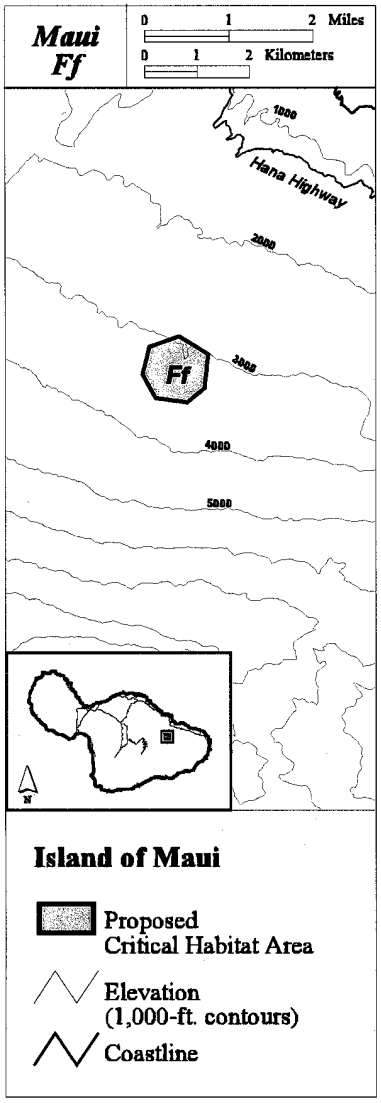
Note: Map follows:



Critical Habitat Maui Ff (119 ha; 295 ac)

Unit consists of the following seven boundary points: 797202, 2301058; 797754, 2300721; 797684, 2300057; 797349, 2299792; 796752, 2299869; 796501, 2300323; 796630, 2300861.

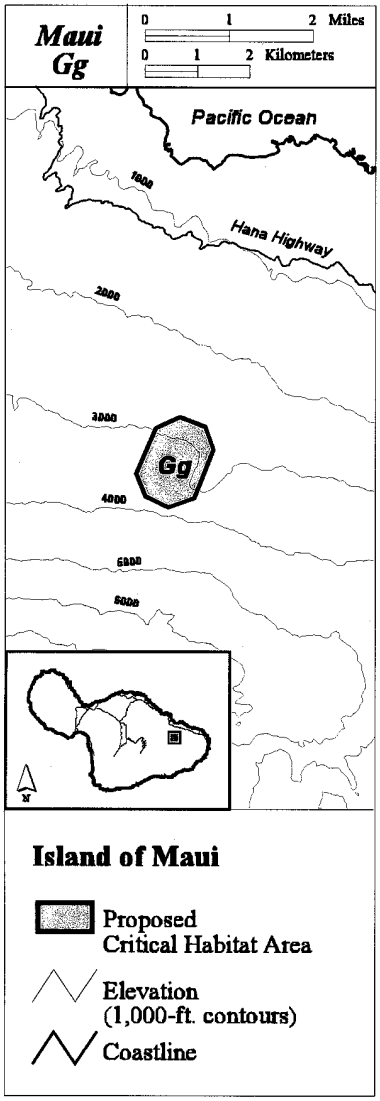
Note: Map follows:



Critical Habitat Maui Gg (177 ha; 438 ac)

Unit consists of the following eight boundary points: 800493, 2300503; 800980, 2300308; 801139, 2299872; 800770, 2298929; 800273, 2298755; 799837, 2298965; 799657, 2299406; 800037, 2300287.

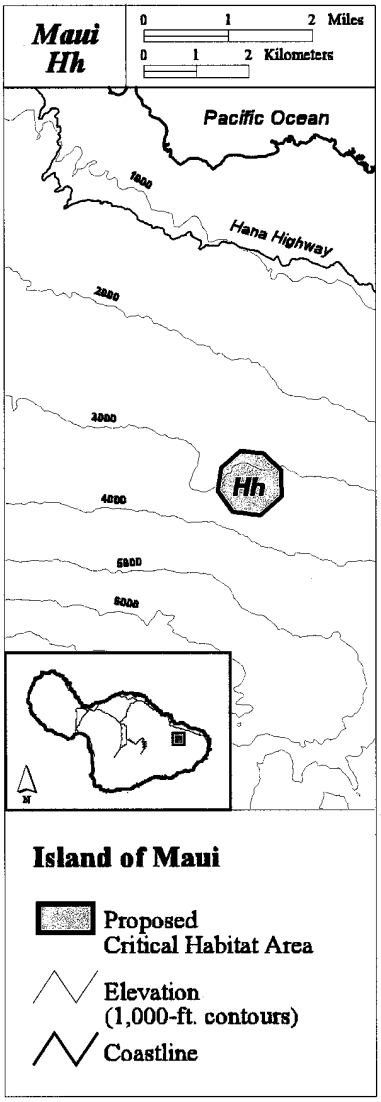
Note: Map follows:



Critical Habitat Maui Hh (117 ha; 290 ac)

Unit consists of the following eight boundary points: 802095, 2299801; 802425, 2299477; 802436, 2298965; 802041, 2298606; 801503, 2298668; 801221, 2299078; 801288, 2299532; 801656, 2299847.

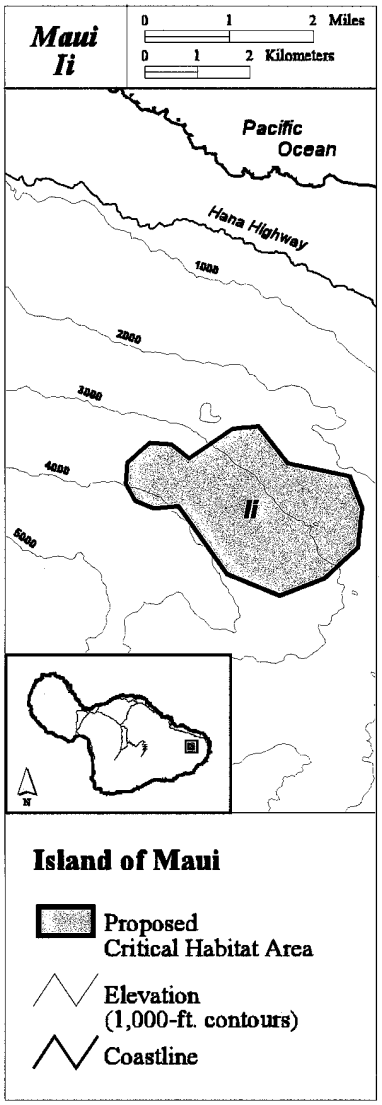
Note: Map follows:



Critical Habitat Maui Ii (879 ha; 2,177 ac)

Area consists of the following seventeen boundary points: 805238, 2298452; 805576, 2298173; 806413, 2298749; 806900, 2298797; 807464, 2298080; 808649, 2297831; 808888, 2297229; 808802, 2296455; 808162, 2295863; 807311, 2295538; 806298, 2295949; 805380, 2297248; 804885, 2297212; 804541, 2297354; 804363, 2297678; 804389, 2298093; 804817, 2298473.

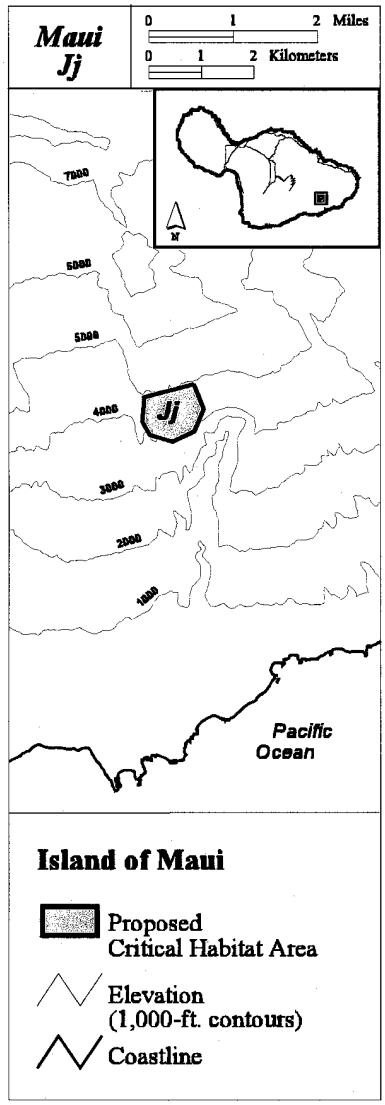
Note: Map follows:



Critical Habitat Maui Jj (93 ha; 230 ac)

Area consists of the following seven boundary points: 799552, 2290323; 799747, 2289854; 799568, 2289425; 799156, 2289228; 798721, 2289360; 798574, 2289611; 798604, 2290076.

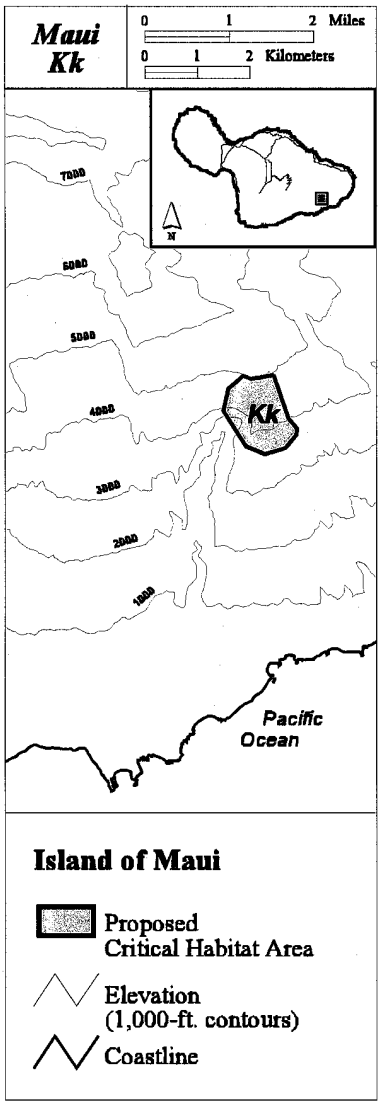
Note: Map follows:



Critical Habitat Maui Kk (144 ha; 357 ac)

Area consists of the following eleven boundary points: 801153, 2290510; 801442, 2289674; 801609, 2289474; 801598, 2289363; 801378, 2289110; 800998, 2288986; 800631, 2289145; 800196, 2289818; 800288, 2290244; 800574, 2290492; 800729, 2290430.

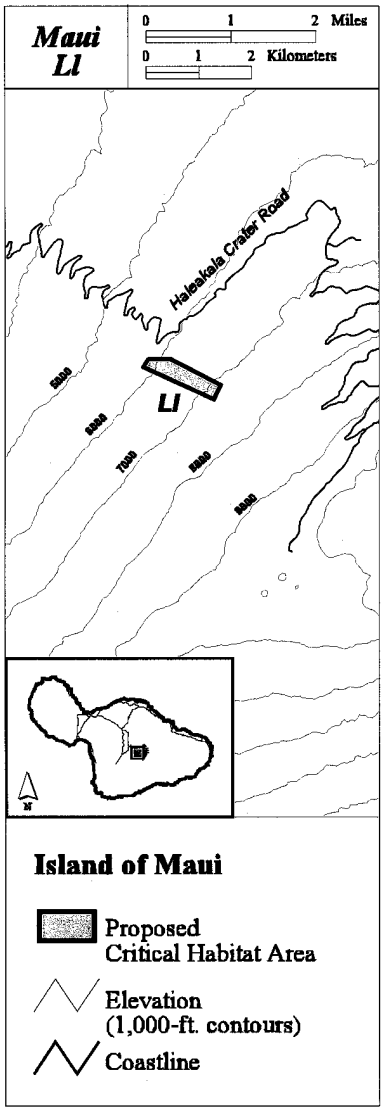
Note: Map follows:



Critical Habitat Maui Ll (45 ha; 111 ac)

Unit consists of the following five boundary points: 783589, 2296659; 784000, 2296654; 784967, 2296159; 784832, 2295889; 783494, 2296508.

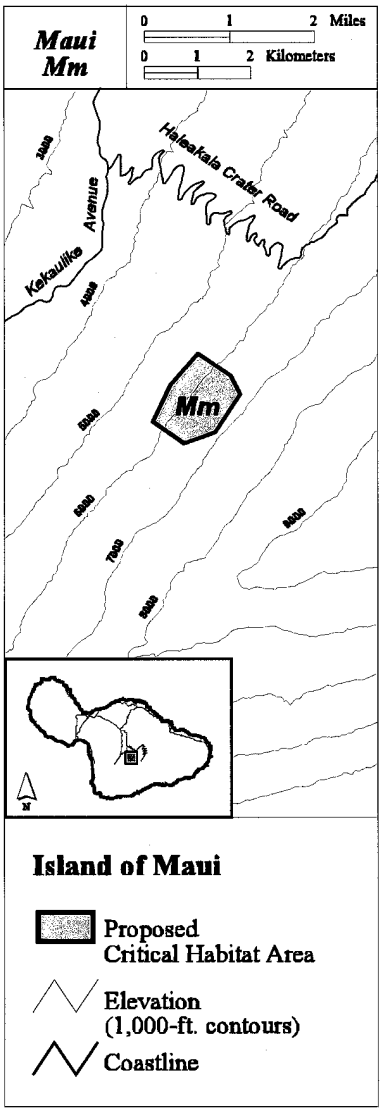
Note: Map follows:



Critical Habitat Maui Mm (167 ha; 413 ac)

Unit consists of the following seven boundary points: 782830, 2294931; 783011, 2294575; 782534, 2293852; 781957, 2293641; 781364, 2294063; 781685, 2294761; 782208, 2295353.

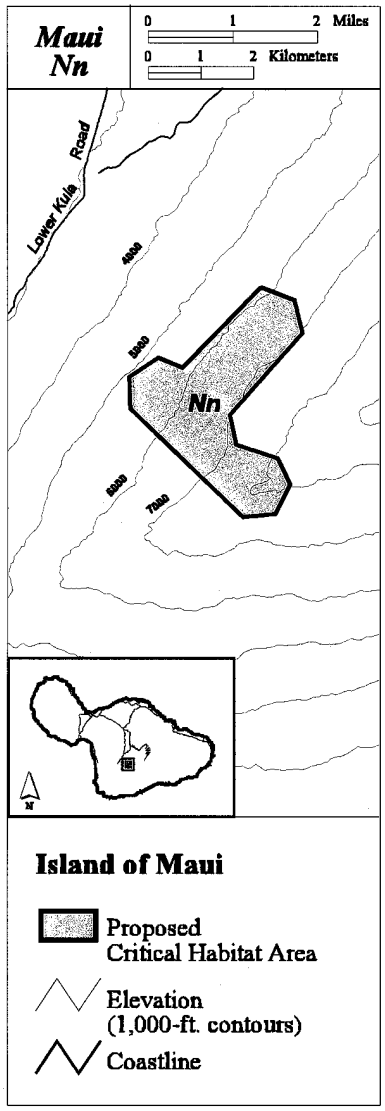
Note: Map follows:



Critical Habitat Maui Nn (692 ha; 1,714 ac)

Unit consists of the following thirteen boundary points: 781075, 2293492; 781722, 2293238; 781873, 2292610; 780491, 2291044; 780607, 2290475; 781404, 2290215; 781633, 2289724; 781347, 2289152; 780735, 2289097; 778589, 2291163; 778569, 2291767; 779128, 2292134; 779587, 2291948.

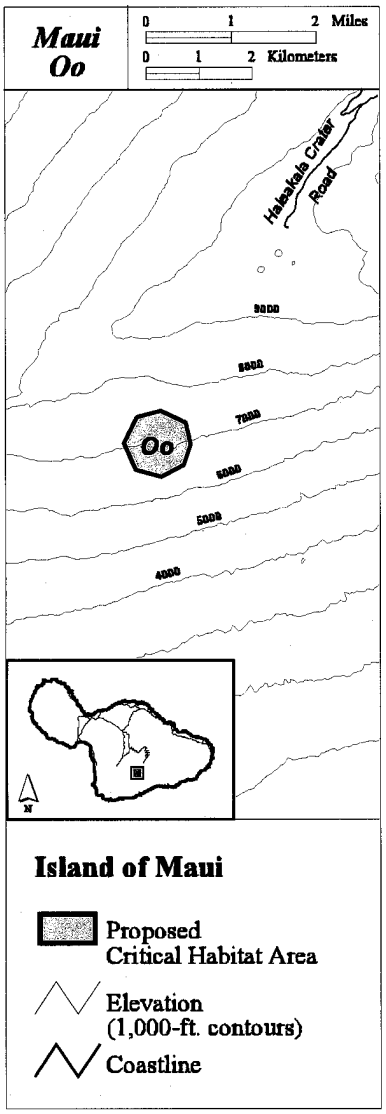
Note: Map follows:



Critical Habitat Maui Oo (116 ha; 287 ac)

Unit consists of the following eight boundary points: 783432, 2289367; 783891, 2289477; 784355, 2289252; 784455, 2288843; 784320, 2288448; 783896, 2288229; 783412, 2288353; 783182, 2288863.

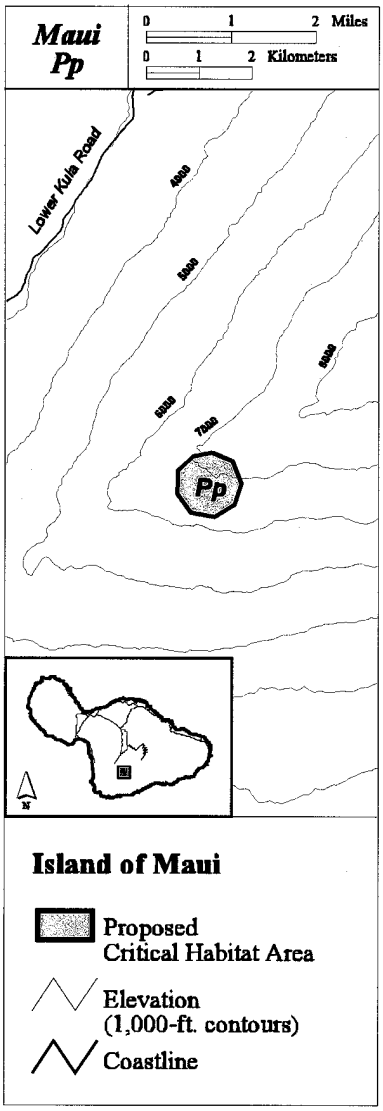
Note: Map follows:



Critical Habitat Maui Pp (113 ha; 280 ac)

Unit consists of the following nine boundary points: 779224, 2288833; 779613, 2288669; 779777, 2288242; 779648, 2287836; 779274, 2287608; 778821, 2287681; 778552, 2288052; 778584, 2288508; 778865, 2288759.

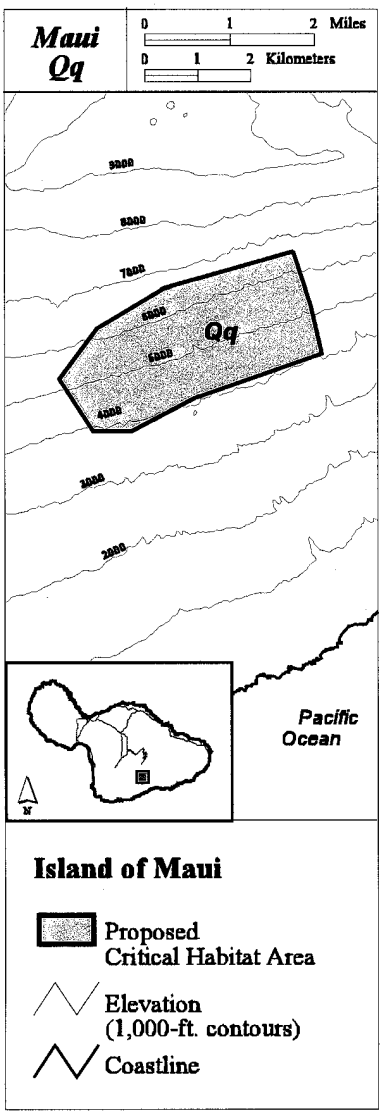
Note: Map follows:



Critical Habitat Maui Qq (973 ha; 2,410 ac)

Area consists of the following nine boundary points: 788449, 2289678; 788781, 2288670; 788991, 2287745; 786579, 2286901; 785388, 2286272; 784631, 2286272; 783991, 2287256; 784711, 2288228; 785979, 2288989.

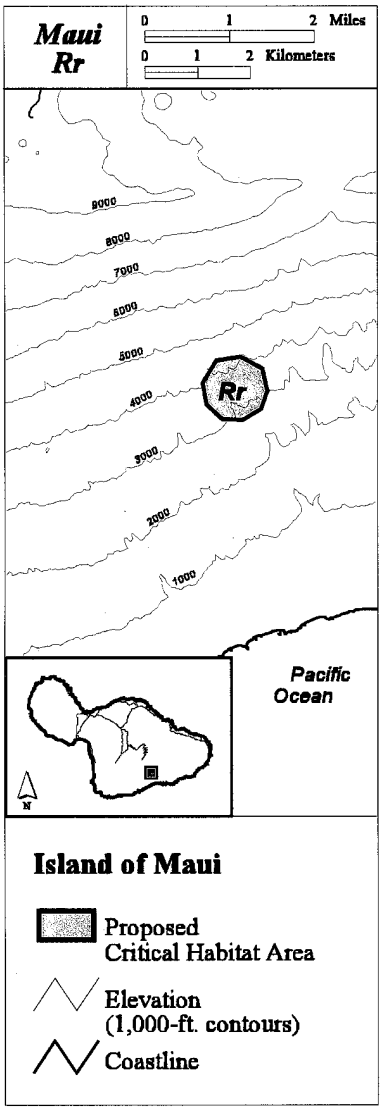
Note: Map follows:



Critical Habitat Maui Rr (115 ha; 285 ac)

Unit consists of the following nine boundary points: 790276, 2288397; 790690, 2288169; 790792, 2287741; 790666, 2287391; 790310, 2287180; 789926, 2287204; 789627, 2287483; 789552, 2287894; 789817, 2288315.

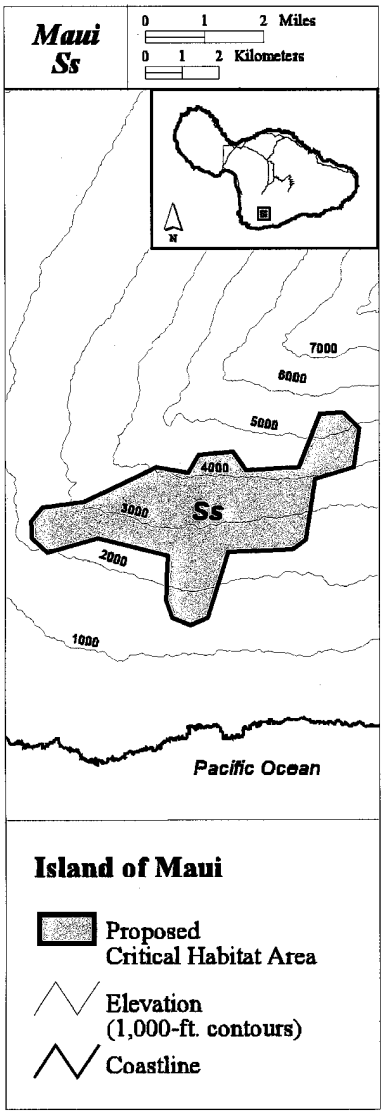
Note: Map follows:



Critical Habitat Maui Ss (1,924 ha; 4,766 ac)

Area consists of the following twenty-five boundary points: 780501, 2286848; 780927, 2286422; 780770, 2285354; 779731, 2285040; 779466, 2283384; 779123, 2283100; 777373, 2283047; 776807, 2281254; 776345, 2281058; 775844, 2281254; 775677, 2281738; 775731, 2282933; 773830, 2283419; 772456, 2283024; 772033, 2283419; 772016, 2283883; 772325, 2284261; 773463, 2284406; 775419, 2285365; 776282, 2285216; 776574, 2285704; 777509, 2285789; 777862, 2285268; 779290, 2285366; 779854, 2286823.

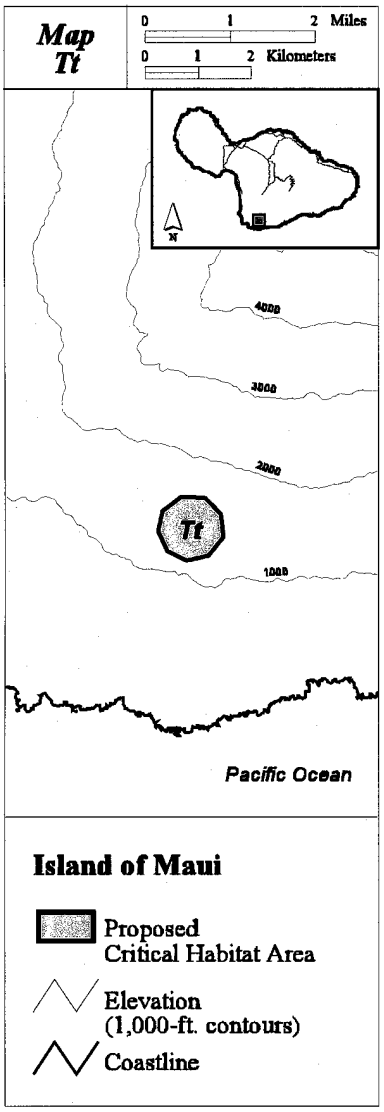
Note: Map follows:



Critical Habitat Maui Tt (114 ha; 282 ac)

Unit consists of the following nine boundary points: 774319, 2281799; 774618, 2281476; 774669, 2281046; 774382, 2280688; 773988, 2280597; 773613, 2280770; 773436, 2281145; 773519, 2281543; 773869, 2281811.

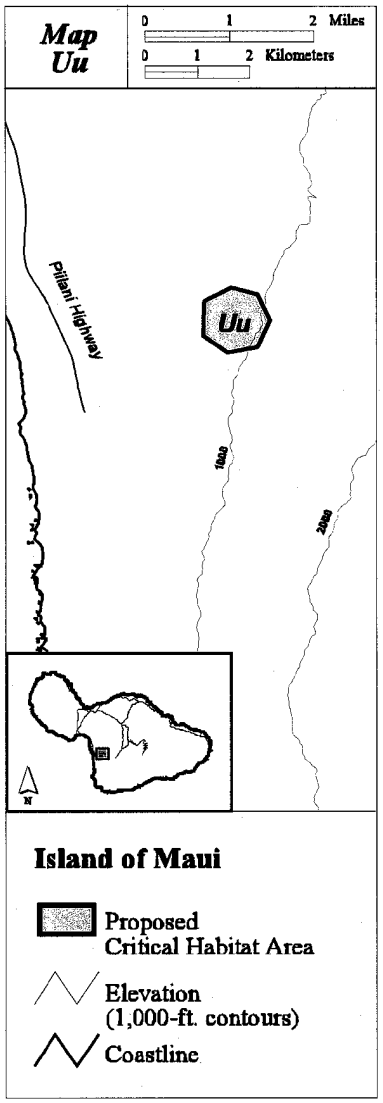
Note: Map follows:



Critical Habitat Maui Uu (121 ha; 300 ac)

Unit consists of the following seven boundary points: 769955, 2294333; 770473, 2294204; 770702, 2293706; 770473, 2293188; 769886, 2293079; 769428, 2293417; 769448, 2294075.

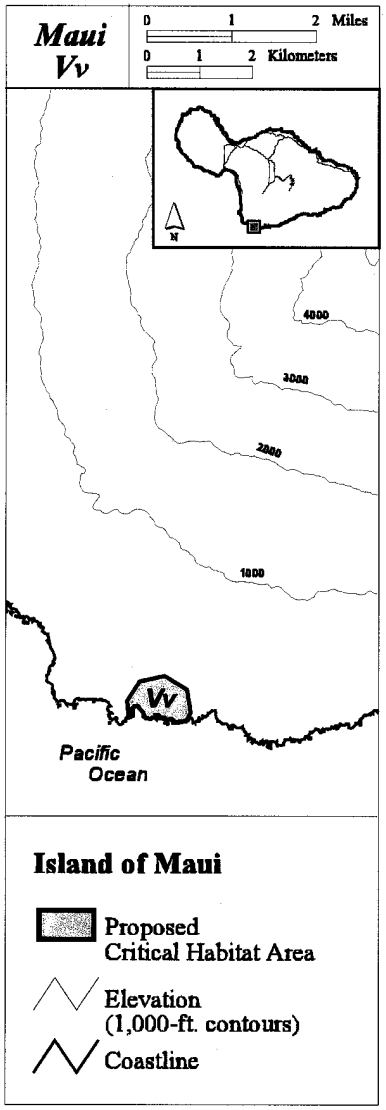
Note: Map follows:



Critical Habitat Maui Vv (77 ha; 190 ac)

Area consists of the following six points and intermediate coastline: 771083, 2278155; 771319, 2278521; 771790, 2278629; 772219, 2278359; 772290, 2277919; 772238, 2277802.

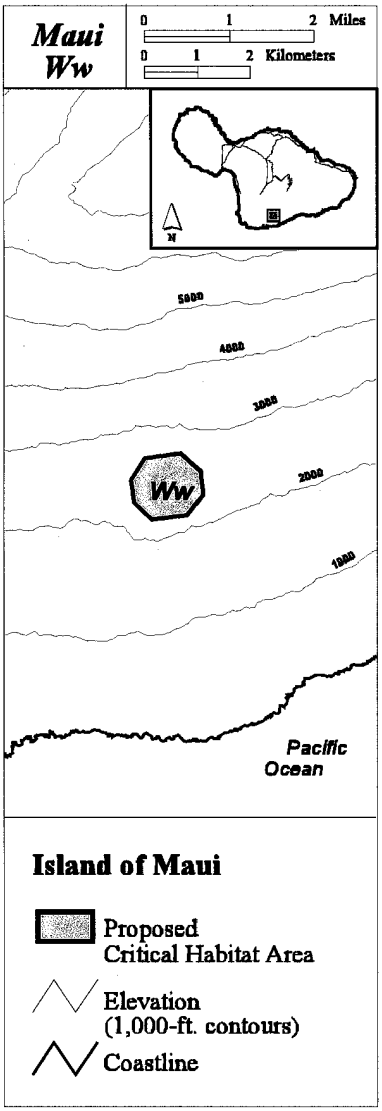
Note: Map follows:



Critical Habitat Maui Ww (133 ha; 329 ac)

Area consists of the following eight boundary points: 780044, 2283292; 780309, 2283700; 780996, 2283798; 781368, 2283449; 781414, 2282999; 781117, 2282618; 780439, 2282530; 780114, 2282850.

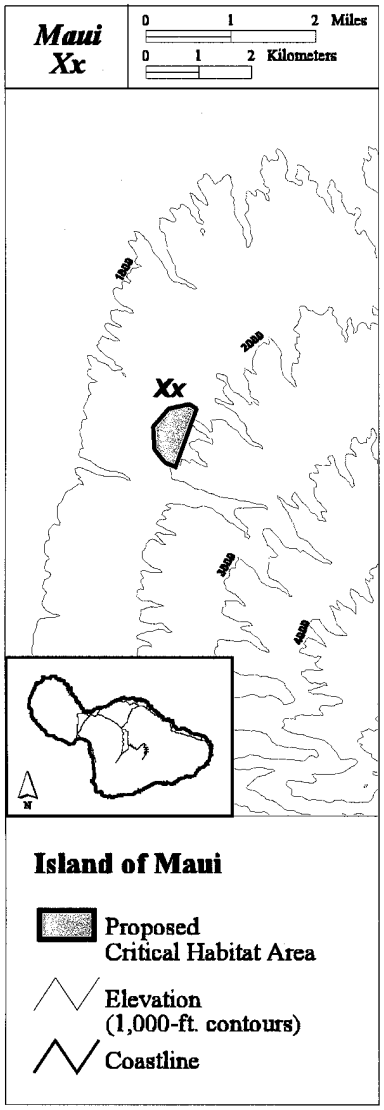
Note: Map follows:



Critical Habitat Maui Xx (60 ha; 149 ac)

Unit consists of the following seven boundary points: 746756, 2318265; 746358, 2317155; 746152, 2317238; 745959, 2317483. 745933, 2317923; 746230, 2318270; 746618, 2318351.

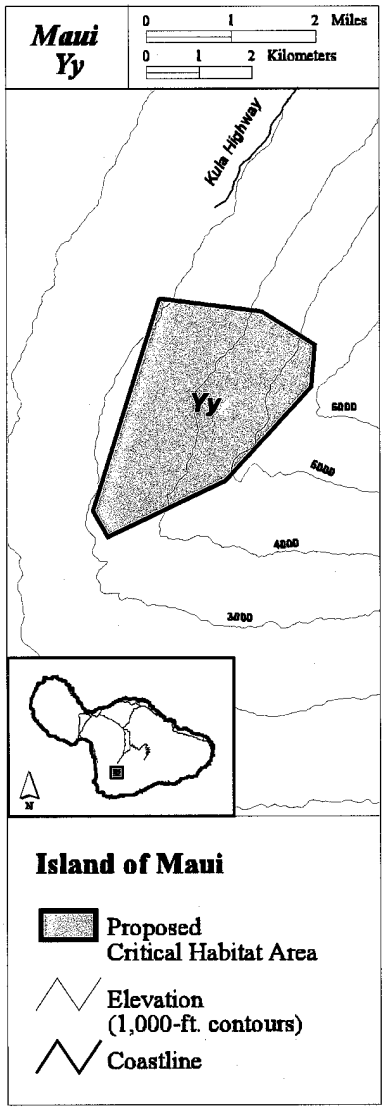
Note: Map follows:



Critical Habitat Maui Yy (1,118 ha; 12,769 ac)

Unit consists of the following seven boundary points: 774248, 2289989; 776203, 2289741; 777204, 2289104; 777136, 2288299; 775497, 2286508; 773256, 2285420; 772970, 2285926.

Note: Map follows:



Critical Habitat Maui Zz (118 ha; 292 ac)

Unit consists of the following seven boundary points: 746920, 2312344; 747339, 2312013; 747462, 2311502; 747063, 2311063; 746450, 2311101; 746173, 2311638; 746338, 2312122.

Note: Map follows:

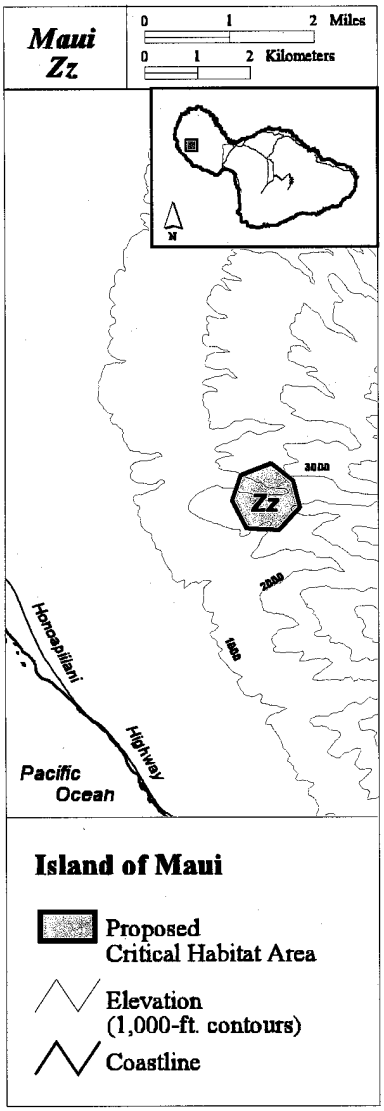


TABLE (A)(1)(I)(C).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON MAUI

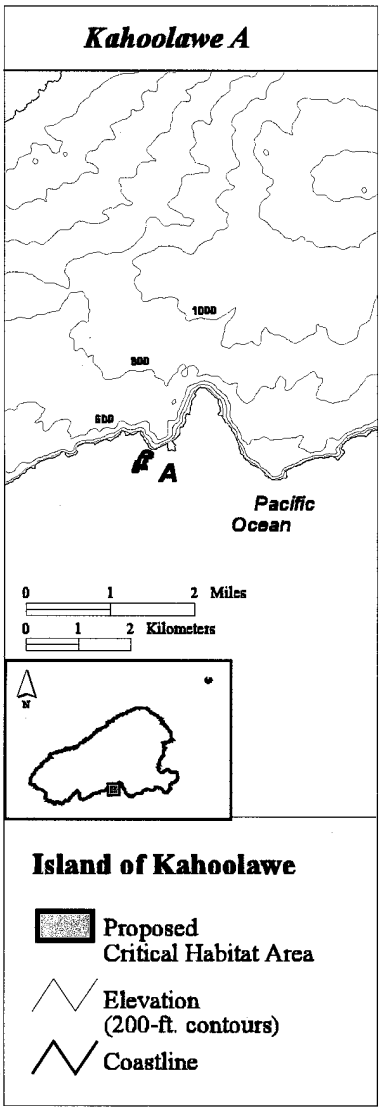
Unit name	Species
Maui A	*Sesbania tomentosa*.
Maui B	*Sesbania tomentosa*.
Maui C	*Sesbania tomentosa*.
Maui D	*Centaurium sebaeoides* and *Sesbania tomentosa*.
Maui E	*Centaurium sebaeoides*.
Maui F	*Centaurium sebaeoides*.
Maui G	*Ischaemum byrone* and *Peucedanum sandwicense*.
Maui H	*Ischaemum byrone*.
Maui I	*Ischaemum byrone*.
Maui J	*Mariscus pennatiformis*.
Maui K	*Ischaemum byrone*.
Maui L	*Ischaemum byrone*.
Maui M	*Ischaemum byrone*.
Maui N	*Lipochaeta kamolensis*.
Maui O	*Bonamia menziesii* and *Hibiscus brackenridgei*.
Maui P	*Clermontia oblongifolia* ssp. *mauiensis*.
Maui Q	*Alectryon macrococcus, Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis mannii, Hesperomannia arbuscula, Lysimachia lydgatei, Phlegmariurus mannii, Plantago princeps, Pteris lidgatei, Sanicula purpurea*, and *Tetramolopium capillare*.
Maui R	*Hesperomannia arbuscula* and *Sanicula purpurea*.
Maui S	*Sanicula purpurea*.
Maui T	*Ctenitis squamigera, Diellia erecta, Neraudia sericea, Platanthera holochila*, and *Remya mauiensis*.
Maui U	*Spermolepis hawaiiensis*.
Maui V	*Hibiscus brackenridgei*.
Maui W	*Phlegmariurus mannii* and *Sanicula purpurea*.
Maui X	*Hedyotis coriacea, Hibiscus brackenridgei, Sesbania tomentosa*, and *Spermolepis hawaiiensis*.
Maui Y	*Cyrtandra munroi*.
Maui Z	*Hesperomannia arborescens*.
Maui Aa	*Pteris lidgatei*.
Maui Bb	*Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi*.
Maui Cc	*Cyanea hamatiflora* ssp. *hamatiflora*.
Maui Dd	*Cyanea hamatiflora* ssp. *hamatiflora* and *Cyanea mceldowneyi*.
Maui Ee	*Geranium multiflorum*.
Maui Ff	*Cyanea hamatiflora* ssp. *hamatiflora*.
Maui Gg	*Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea mceldowneyi*.
Maui Hh	*Clermontia samuelii* and *Cyanea mceldowneyi*.
Maui Ii	*Clermontia samuelii*.
Maui Jj	*Phlegmariurus mannii*.
Maui Kk	*Cyanea hamatiflora* ssp. *hamatiflora* and *Phlegmariurus mannii*.
Maui Ll	*Geranium arboreum*.
Maui Mm	*Geranium arboreum*.
Maui Nn	*Geranium arboreum*.
Maui Oo	*Bidens micrantha* ssp. *kalealaha*.
Maui Pp	*Geranium arboreum*.
Maui Qq	*Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Neraudia sericea, Phlegmariurus mannii*, and *Phyllostegia mollis*.
Maui Rr	*Alectryon macrococcus*.
Maui Ss	*Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Colubrina oppositifolia, Flueggea neowawraea, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Spermolepis hawaiiensis*, and *Zanthoxylum hawaiiense*.
Maui Tt	*Sesbania tomentosa*.
Maui Uu	*Hibiscus brackenridgei*.
Maui Vv	*Vigna o-wahuensis*.
Maui Ww	*Flueggea neowawraea*.
Maui Xx	*Ctenitis squamigera*.
Maui Yy	*Clermontia lindseyana*.
Maui Zz	*Ctenitis squamigera*.

(D) *Kahoolawe.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

Critical Habitat Kahoolawe A (5 ha; 12 ac)

Unit consists of the entire islet, located at UTM coordinate 749248, 2269914.

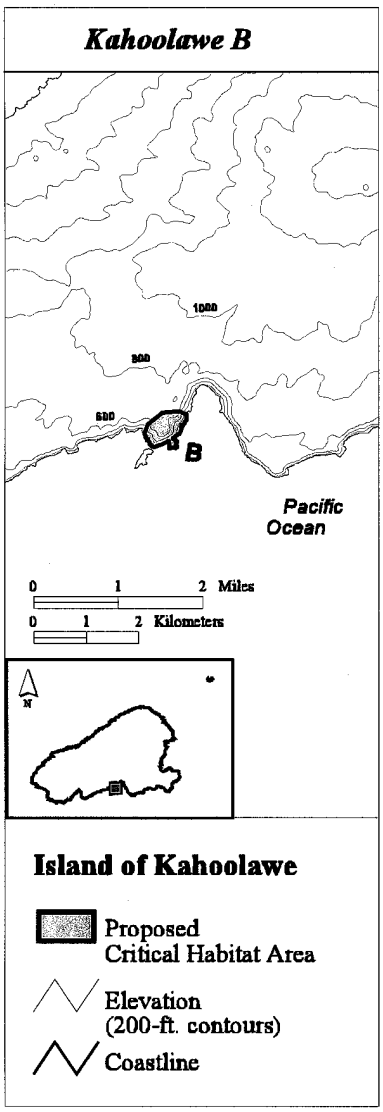
Note: Map follows:



Critical Habitat Kahoolawe B (38 ha; 94 ac)

Unit consists of the following five boundary points: 749258, 2270360; 749316, 2270548; 749609, 2270771; 749934, 2270789; 750070, 2270730.

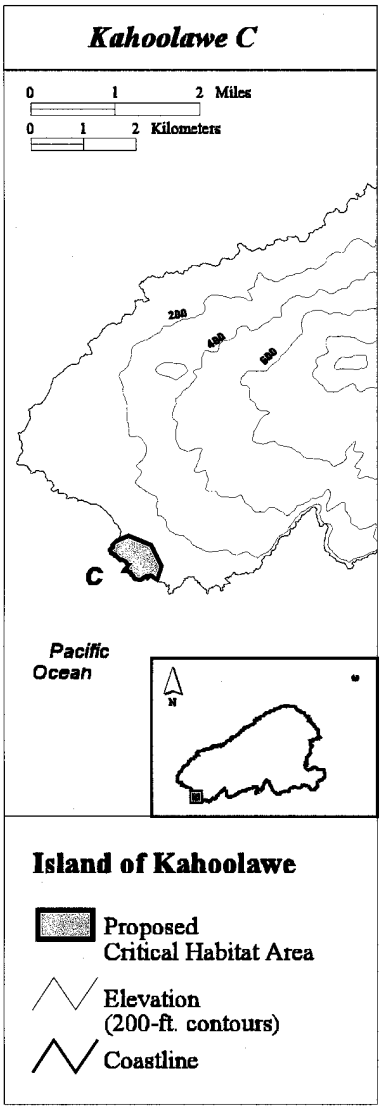
Note: Map follows:



Critical Habitat Kahoolawe C (50 ha; 124 ac)

Unit consists of the following five boundary points: 741673, 2269672; 741903, 2269761; 742323, 2269587; 742526, 2269182; 742449, 2268925.

Note: Map follows:



Critical Habitat Kahoolawe D (114 ha; 282 ac)

Unit consists of the following eight boundary points: 745602, 2274210; 745392, 2273720; 744942, 2273560; 744467, 2273770; 744329, 2274239; 744543, 2274682; 744977, 2274799; 745382, 2274666.

Note: Map follows:

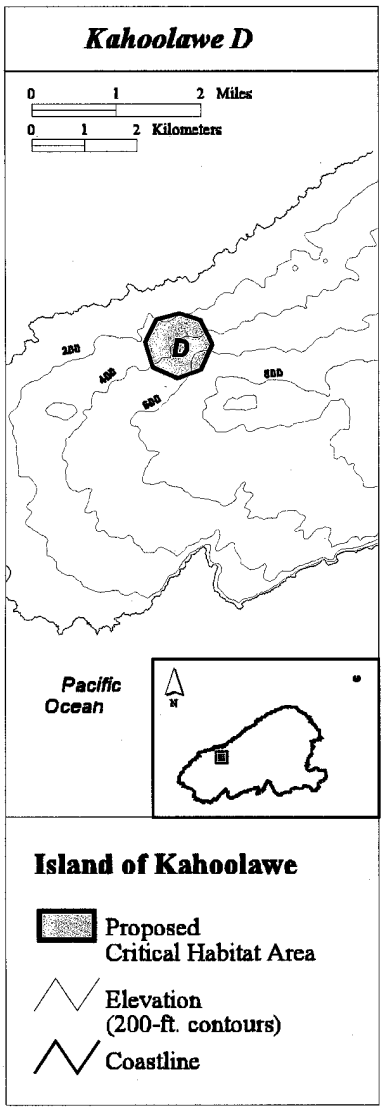


TABLE (A)(1)(I)(D).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON KAHOOLAWE

Unit name	Species
Kahoolawe A	*Sesbania tomentosa.*
Kahoolawe B	*Kanaloa kahoolawensis.*
Kahoolawe C	*Vigna o-wahuensis.*
Kahoolawe D	*Vigna o-wahuensis.*

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

i. Kauai F, G, I, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 915 m (3,000 ft).

ii. Maui unit G, identified in the legal description in paragraph (a)(1)(i)(C) of this section, of this section constitutes critical habitat for *Peucedanum sandwicense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Peucedanum sandwicense* on Maui are habitat components that provide: (1) cliff habitats containing one or more of the following associated native species: *Chamaesyce* sp., *Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 900 m (2,950 ft).

Family Apiaceae: *Sanicula purpurea* (No Common Name)

Maui units Q, R, S, and W, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units the currently known primary constituent elements of critical habitat for Sanicula purpurea on Maui are the habitat components that provide: (1) Open *Metrosideros polymorpha* mixed montane bogs containing one or more of the following associated plant taxa: *Styphelia tameiameiae, Gahnia beechyi, Geranium humile, Myrsine vaccinioides, Viola mauiensis, Argyroxiphium caliginis, Plantago pachyphylla, Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera mauiensis, Machaerina* sp., or *Oreobolus furcatus;* and (2) elevations between 1,000 and 1,620 m (3,280 and 5,330 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (No Common Name)

i. Kauai B and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii;* and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

ii. Maui units U and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Spermolepis hawaiiensis* on Maui are the habitat components that provide: (1) Shady spots (a) in *Dodonaea viscosa* lowland dry shrubland and (b) containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* sp., *Erythrina sandwicensis, Diospyros* sp., *Pleomele* sp., *Lipochaeta livarum, Sida fallax, Myoporum sandwicensis, Santalum ellipticum,* or *Heteropogon contortus;* and (2) elevations of 300 to 550 m (980 to 1,800 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (Kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea,*

Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, or Pouteria sandwicensis;* and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (No Common Name)

Kauai G, I, M, and N, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (Ko'oko'olau)

Maui units Oo and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui are the habitat components that provide: (1) Blocky lava flows with little or no soil development, deep pit craters, or sheer rock walls (a) in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, or cliff faces; and (b) containing one or more of the following associated native plant species: *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Lysimachia remyi, Viola chamissoniana, Dubautia menziesii,* or *Dubautia platyphylla;* and (2) elevations of 1,600 to 2,300 m (5,250 to 7,550 ft).

Family Asteraceae: *Dubautia latifolia* (Na'ena'e)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (Na'ena'e)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, description above, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (Na'ena'e)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui are the habitat components that provide: (1) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis, Carex* sp., *Hedyotis formosa, Lysimachia remyi, Bidens* sp., *Pritchardia* sp., or *Plantago princeps;* and (2) elevations between 350 to 400 m (1,150 to 1,300 ft).

Family Asteraceae: *Hesperomannia arborescens* (No Common Name)

Maui unit Z, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hesperomannia arborescens* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hesperomannia arborescens* on Maui are the habitat components that provide: (1) Slopes or ridges (a) in lowland mesic or wet forest and (b) containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis, Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., or *Freycinetia arborea;* and (2) elevations between 360 and 750 m (1,180 and 2,460 ft).

Family Asteraceae: *Hesperomannia arbuscula* (No Common Name)

Maui units Q and R, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Hesperomannia arbuscula* on Maui are the habitat components that provide: (1) Slopes and ridges (a) in mesic or wet forest dominated by *Acacia koa* and *Metrosideros polymorpha* and (b) containing one or more of the following associated native plant species: *Bidens* sp., *Tetraplasandra* sp., *Alyxia oliviformis,* or *Psychotria* sp.; and (2) elevation between 350 to 900 m (1,150 to 2,950 ft).

Family Asteraceae: *Hesperomannia lydgatei* (No Common Name)

Kauai F, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis;* and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (Nehe)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently

known primary constituent elements of critical habitat are habitat components that provide: (1) Moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis, or Hibiscus waimeae;* and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta kamolensis* (Nehe)

Maui unit N, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lipochaeta kamolensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Lipochaeta kamolensis* on Maui are the habitat components that provide: (1) Bottoms of rock ledges (a) in dry to mesic scrub or dry lowland forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica,* or *Ipomoea indica;* and (2) elevations between 219 to 250 m (720 to 820 ft).

Family Asteraceae: *Lipochaeta micrantha* (Nehe)

i. Kauai I and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) Cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum;* and (2) elevations between 305–430 m (1,000–1,400 ft).

ii. Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) Basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa;* and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (Nehe)

Kauai B, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Precipitous, shrub-covered gulch (a) in diverse lowland forest and (b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata;* and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast facing slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis*, *Schiedea membranacea*, *Psychotria mariniana*, *Dodonaea viscosa*, *Dianella sandwicensis*, *Tetraplasandra kauaiensis*, or *Claoxylon sandwicensis*; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya mauiensis* (No Common Name)

Maui unit T, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Remya mauiensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Remya mauiensis* on Maui are the habitat components that provide: (1) Steep, north or northeast-facing slopes (a) in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and (b) containing one or more of the following associated native species: *Diospyros sandwicensis*, *Xylosma hawaiiense*, *Nestegis sandwicensis*, *Myrsine lessertiana*, *Wikstroemia* sp., *Dodonaea viscosa*, *Diplazium sandwichianum*, *Lysimachia remyi*, *Microlepia strigosa*, *Melicope* sp., *Alyxia oliviformis*, *Pleomele auwahiensis*, *Psychotria mariniana*, *Ctenitis squamigera*, or *Styphelia tameiameiae*; and (2) elevations between 850 and 1,250 m (2,800 and 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha mixed mesic forest and (b) containing one or more of the following associated native plant species: Lysimachia glutinosa*, *Lepidium serra*, *Boehmeria grandis*, *Poa mannii*, *Stenogyne campanulata*, *Myrsine linearifolia*, *Bobea timonioides*, *Ilex anomala*, *Zanthoxylum dipetalum*, *Claoxylon sandwicensis*, *Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea*, *Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Tetramolopium capillare* (Pamakani)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Tetramolopium capillare* on Maui are the habitat components that provide: (1) Rocky substrates (a) in *Heteropogon contortus* lowland dry forest and (b) containing one or more of the following associated native plants: *Dodonaea viscosa*, or *Myoporum sandwicense*; or (c) in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and (d) containing one or more of the following associated plants: *Metrosideros polymorpha*, and *Styphelia tameiameiae*, and *Dodonaea viscosa*; and (2) elevations between 609 and 1,050 m (2,000 and 3,440 ft).

Family Asteraceae: *Wilkesia hobdyi* (Dwarf Iliau)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known

primary constituent elements of critical habitat are habitat components that provide: (1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium*, *Lipochaeta connata*, *Lobelia niihauensis*, *Peucedanum sandwicensis*, *Hibiscus kokio* ssp. *saint johnianus*, *Canthium odoratum*, *Peperomia* sp., *Myoporum sandwicense*, *Sida fallax*, *Waltheria indica*, *Dodonaea viscosa*, or *Eragrostis variabilis*; and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* (‘Olulu)

Kauai E, G, and M, identified in the legal descriptions in paragraph a)(1)(i)(A) of this section, and Niihau B, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides*, *Canthium odoratum*, *Eragrostis variabilis*, *Heteropogon contortus*, *Hibiscus kokio*, *Hibiscus saintjohnianus*, *Lepidium serra*, *Lipochaeta succulenta*, *Munroidendron racemosum*, or *Sida fallax*; and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Clermontia lindseyana* (‘Oha Wai)

Maui units Qq and Yy, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Clermontia lindseyana* on Maui are the habitat components that provide: (1) Remnant *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra oxybapha*, native fern species, *Phlegmariurus mannii*, *Ilex anomala*, *Coprosma* sp., or *Myrsine* sp.; and (2) elevations between 4,300 and 7,041 ft (1,311 and 2,150 m).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (‘Oha Wai)

Maui unit P, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui are the habitat components that provide: (1) The sides of ridges (a) in *Metrosideros polymorpha*-dominated montane wet forest and (b) containing one or more of the following associated native plant species: *Dicranopteris linearis*, *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., or *Melicope* sp.; and (2) elevations between 850 and 1,000 m (2,800 and 3,280 ft).

Family Campanulaceae: *Clermontia samuelii* (‘Oha Wai)

Maui units Hh and Ii, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia samuelii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Clermontia samuelii* ssp. *hanaensis* on Maui are the habitat components that provide: (1) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Dicranopteris linearis* forest containing one or more of the following associated native plant species: *Tetraplasandra oahuensis*, *Hedyotis terminalis*, *Hedyotis hillebrandii*, *Broussaisia arguta*, *Cibotium* sp., *Argyroxiphium grayanum*, *Dubautia* sp., *Clermontia arborea*, *Psychotria mariniana*, *Melicope clusifolia*, *Diplazium sandwichianum*, *Peperomia obovatilimba*, *Adenophorus tamariscinus*, *Vaccinium* sp., *Carex alligata*, *Melicope* sp., or *Cheirodendron trigynum*; and (2) elevations between 915 and 1,059 m (3,000 and 3,600 ft). Within these units, the currently known primary constituent elements of critical habitat for *Clermontia samuelii* ssp. *samuelii* on Maui are the habitat components that provide: (1) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Cheirodendron trigynum* forest and containing one or more of the following native plant species: *Hedyotis hillebrandii*, *Cibotium* sp., *Broussaisia arguta*, *Diplazium sandwichianum*, *Rubus hawaiiensis*, *Clermontia arborescens* ssp. *waihiae*, *Dubautia* sp., *Clermontia* sp., *Hedyotis* sp., *Vaccinium* sp., *Carex alligata*, or *Melicope* sp.; and (2) elevations between 1,726 to 2,100 m (5,870 to 6,900 ft).

Family Campanulaceae: *Cyanea asarifolia* (Haha)

Kauai R and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Hedyotis elatior*, *Machaerina angustifolia*, *Metrosideros polymorpha*, *Touchardia latifolia*, or *Urera glabra*; and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (Haha)

Maui units Bb and Gg, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui are the habitat components that provide: (1) Stream banks and wet scree slopes (a) in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following associated native plant species: *Cibotium* sp, *Perrottetia sandwicensis*, *Psychotria hawaiiensis*, *Broussaisia arguta*, or *Hedyotis acuminata*; and (2) elevations between 730 and 1,340 m (2,400 and 4,400 ft).

Family Campanulaceae: *Cyanea glabra* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea glabra* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea glabra* on Maui are the habitat components that provide: (1) Soil and rock stream banks (a) in wet lowland forest and dominated by *Acacia koa* and/or *Metrosideros polymorpha*; and (2) elevations from 800 to 1,340 m (2,625 to 4,400 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui are the habitat components that provide: (1) Rocky or steep slopes of stream banks (a) in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp.,

Nestegis sandwicensis, *Psychotria* sp., or *Xylosma* sp.; and (2) elevations between 350 and 945 m (1,150 and 3,100 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (Haha)

Maui units Cc, Dd, Ff, and Kk, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui are the habitat components that provide: (1) Montane wet forest dominated by *Metrosideros polymorpha*, with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis*, *Cheirodendron trigynum*, *Broussaisia arguta*, *Cyanea solenocalyx*, *Cyanea kunthiana*, *Vaccinium* sp., *Melicope* sp., or *Myrsine* sp.; and (2) elevations from 975 to 1,500 m (3,200 to 4,920 ft).

Family Campanulaceae: *Cyanea lobata* (Haha)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea lobata* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyanea lobata* on Maui are the habitat components that provide: (1) Steep stream banks in deep shade (a) in wet forest and (b) containing one or more of the following associated native plant species: *Touchardia latifolia*, *Morinda trimera*, or *Athyrium* sp.; and (2) elevations of 550 to 915 m (1,800 to 3,000 ft).

Family Campanulaceae: *Cyanea mceldowneyi* (Haha)

Maui units Bb, Dd, Gg, and Hh, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea mceldowneyi* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Cyanea mceldowneyi* on Maui are the habitat components that provide: (1) Montane wet forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Melicope clusiifolia*, *Hedyotis* sp., *Clermontia arborescens*, *Diplazium sandwichianum*, *Broussaisia arguta*, *Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis*, or *Cheirodendron trigynum*; and (2) elevations between 925 and 1,280 m (3,034 and 4,200 ft).

Family Campanulaceae: *Cyanea recta* (Haha)

Kauai K, O, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis*, *Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum*, *Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (Haha)

Kauai L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta*, *Metrosideros polymorpha*, *Freycinetia arborea*, *Hedyotis terminalis*, *Machaerina angustifolia*, *Perrottetia sandwicensis*, *Psychotria hexandra*, or *Syzygium sandwicensis*; and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (Haha)

Kauai L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (No Common Name)

Kauai F, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana*, *Psychotria hobdyi*, *Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa*, *Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis*, *Diospyros sandwicensis*, *Styphelia tameiameiae*, or *Nestegis sandwicensis*; and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: *Delissea rivularis* (‘Oha)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia*, *M. anisata*, *Psychotria hexandra*, *Dubautia knudsenii*, *Diplazium sandwichianum*, *Hedyotis foggiana*, *Ilex anomala*, or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum*, *Nothocestrum breviflorum*, or *Acacia koa*; and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (No Common Name)

Kauai F, G, I, and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the

following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi*, *Hibiscus kokio* ssp. *saint johnianus*, *Nototrichium* sp., *Schiedea apokremnos*, *Chamaesyce celastroides*, *Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (Kuawawaenohu)

Kauai G and H, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis*, *Astelia* sp., or *Broussaisia arguta*; and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis*, *Bidens cosmoides*, *Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa*, *Gahnia* sp., *Ilex anomala*, *Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides*; and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (Ma'oli'oli)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis*, *Lobelia niihauensis*, *Wilkesia hobdyi*, *Lipochaeta connata*, *Myoporum sandwicense*, *Canthium odoratum*, or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides*, *Scaevola procera*, *Hedyotis terminalis*, *Syzygium sandwicensis*, *Melicope clusifolia*, *Cibotium* sp., *Broussaisia arguta*, *Cheirodendron* sp., *Cyanea hirtella*, *Dianella sandwicensis*, *Viola wailenalenae*, or *Poa sandvicensis*; and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea membranacea* (No Common Name)

Kauai G, I, and K, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (No Common Name)

Kauai M, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (No Common Name)

Kauai C, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (=ma'oli'oli))

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Convolvulaceae: *Bonamia menziesii* (No Common Name)

(i.) Kauai G and L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

(ii.) Maui units O and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bonamia menziesii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Bonamia menziesii* on Maui are the habitat components that provide: (1) A'a lava (a) in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium, Pouteria sandwicensis, Achyranthes splendens, Acacia koaia, Sida fallax, Reynoldsia sandwicensis, Sicyos* sp., *Lipochaeta rockii, Nototrichium* sp., *or Myoporum sandwicense;* and (2) elevations between 150 and 854 m (490 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu'uka'a)

Kauai G, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau A, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Cyperaceae: *Mariscus pennatiformis* (No Common Name)

Maui unit J, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* on Maui are the habitat components that provide: (1) Cliffs with brown soil and talus within reach of ocean spray (a) in *Pandanus* coastal wet forests and (b) containing one or more of the following associated native plant species: *Sadleria pallida, Pandanus tectorius, Lysimachia mauritiana, Cyperus laevigatus, Eragrostis* sp., or *Ipomoea* sp.; and (2) elevations between sea-level and 6 m (20 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* ('Akoko)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon* sp., *Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (Mehamehame)

(i.) Kauai F, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron*

racemosum, Tetraplasandra sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

(ii.) Maui units Ss and Ww, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Flueggea neowawraea* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Flueggea neowawraea* on Maui are the habitat components that provide: (1) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Hibiscus* sp., *Melicope* sp., *Myrsine lanaiensis, Tetraplasandra* sp., *Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis,* or *Streblus pendulina;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Kanaloa kahoolawensis* (Kohe Malama Malama O Kanaloa)

Kahoolawe unit B, identified in the legal description in paragraph (a)(1)(i)(D) of this section, constitutes critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within this unit the currently known primary constituent elements of critical habitat for *Kanaloa kahoolawensis* on Kahoolawe are the habitat components that provide: (1) Steep rocky talus slopes (a) in mixed coastal shrubland and (b) containing one or more of the following associated native plants: *Sida fallax, Senna gaudichaudii, Bidens mauiensis, Lipochaeta livarum, Portulaca molokinensis,* or *Capparis sandwichiana;* and (2) elevations between 45 to 60 m (150 to 200 ft).

Family Fabaceae: *Sesbania tomentosa* (‘Ohai)

(i.) Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

(ii.) Maui units A, B, C, D, X, Tt, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and the Kahoolawe unit A, identified in the legal descriptions in paragraph (a)(1)(i)(D) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe, respectively. Within these units the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe are the habitat components that provide: (1) Windswept slopes, sea cliffs and cinder slopes (a) in *Scaevola sericea* coastal dry shrublands and (b) containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Rhynchelytrum repens, Sida fallax,* and *Dodonaea viscosa;* and (2) elevations between sea-level and 580 m (1,900 ft).

Family Fabaceae: *Vigna o-wahuensis* (No Common Name)

Maui unit Vv, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and Kahoolawe units C and D, identified in the legal descriptions in paragraph (a)(1)(i)(D) of this section, constitute critical habitat for *Vigna o-wahuensis* on Maui and Kahoolawe, respectively. Within these units the currently known primary constituent elements of critical habitat for *Vigna o-wahuensis* on Maui and Kahoolawe are the habitat components that provide: (1) Dry or mesic grassland or shrubland containing one or more of the following associated plant taxa: *Sida fallax, Chenopodium* sp., *Dubautia menziesii, Dodonaea viscosa, Chamaesyce* sp., *Nothocestrum latifolium,* and *Nesoluma polynesicum,* or *Osteomeles anthyllidifolia;* and (2) elevations from 10 to 140 m (30 to 460 ft).

Family Flacourtiaceae: *Xylosma crenatum* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and (2) elevations between 975 to 1,065 m (3,200 to 3,490 ft).

Family Gentianaceae: *Centaurium sebaeoides* (‘Awiwi)

(i.) Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species; *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

(ii.) Maui units D, E, and F, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Centaurium sebaeoides* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Centaurium sebaeoides* on Maui are the habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following associated native plant species: *Panicum torridum, Lysimachia mauritiana, Schiedea globosa, Lipochaeta integrifolia, Argemone glauca, Bidens mauiensis, Lycium sandwicense,* or *Dicranopteris*

linearis; and (2) elevations below 250 m (820 ft).

Family Geraniaceae: *Geranium arboreum* (Nohoanu)

Maui units Ll, Mm, Nn, and Pp, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Geranium arboreum* on Maui are the habitat components that provide: (1) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams (a) in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and (b) containing one or more of the following associated native plant species: *Vaccinium reticulatum, Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana;* and (2) elevations between 1,525 to 2,135 m (5,000 and 7,000 ft).

Family Geraniaceae: *Geranium multiflorum* (Nohoanu)

Maui unit Ee, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Geranium multiflorum* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Geranium multiflorum* on Maui are the habitat components that provide: (1) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Rubus hawaiiensis, Ranunculus* sp., *Vaccinium* sp., *Metrosideros polymorpha, Hedyotis* sp., *Styphelia tameiameiae* or *Sadleria cyatheoides;* and (2) elevations between 1,580 and 2,450 m (5,180 and 8,040 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (Mapele)

Kauai K, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes or cliffs near streams or waterfalls (a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (Ha'iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Gesneriaceae: *Cyrtandra munroi* (Hiawale)

Maui unit Y, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyrtandra munroi* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cyrtandra munroi* on Maui are the habitat components that provide: (1) Rich, moist to wet, moderately steep talus slopes (a) in lowland wet *Metrosideros polymorpha-Dicranopteris linearis* forest and (b) containing one or more of the following associated native plant species: *Diospyros* sp., *Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., or other *Cyrtandra* sp.; and (2) elevations from 300 to 920 m (980 to 3,020 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros sp., Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia mollis* (No Common Name)

Maui unit Qq, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Phyllostegia mollis* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Phyllostegia mollis* on Maui are the habitat components that provide: (1) Steep slopes and gulches (a) in diverse mesic or wet forests and (b) containing one or more of the following associated native plant taxa: ferns, *Psychotria* sp., or *Pisonia* sp.; and (2) elevations between 450 and 1,830 m (1,480 to 6,000 ft).

Family Lamiaceae: *Phyllostegia wawrana* (No Common Name)

Kauai G, I, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2)

elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne campanulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* or *Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (Kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (Kamakahala)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Malvaceae: *Hibiscadelphus woodii* (Hau Kuahiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915m (3,000 ft).

Family Malvaceae: *Hibiscus brackenridgei* (Ma‘o Hau Hele)

Maui units O, V, X, and Uu, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Hibiscus brackenridgei* on Maui are the habitat components that provide: (1) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum* sp., *Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Canthium odoratum, Eurya sandwicensis, Isachne distichophylla,* or *Sida fallax;* and (2) elevations between 130 to 800 m (425 to 2,625 ft).

Family Malvaceae: *Hibiscus clayi* (Clay’s Hibiscus)

Kauai N, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Slopes (a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (Koki‘o Ke‘oke‘o)

Kauai F, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (Koki‘o)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis;* and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Myrsinaceae: *Myrsine linearifolia* (Kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea*

brevipes, Nothocestrum sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (No Common Name)

(i.) Kauai H, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae,* or *Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

(ii.) Maui unit T, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Platanthera holochila* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Platanthera holochila* on Maui are the habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bog or mesic scrubby *Metrosideros polymorpha* forest containing one or more of the following associated native plants: *Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana, Sadleria* sp., *Lythrum maritimum, Deschampsia* sp., *Metrosideros polymorpha, Luzula hawaiiensis, Sisyrinchium acre, Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum, Dubautia scabra, Polypodium pellucidum, Gahnia gahniiformis,* and *Vaccinium reticulatum;* and (2) elevations between 1,050 and 2,120 m (3,440 and 6,960 ft).

Family Plantaginaceae: *Plantago princeps* (Laukahi Kuahiwi)

(i.) Kauai G, K, P, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia;* and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

(ii.) Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Plantago princeps* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Plantago princeps* on Maui are the habitat components that provide: (1) Basalt cliffs (a) in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-Metrosideros polymorpha* montane wet forest; or *Metrosideros polymorpha* montane wet shrubland and (b) containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa,* and *Dubautia plantaginea* spp. *humile;* and (2) elevations between 400 and 2,050 m (1,300 and 6,700 ft).

Family Poaceae: *Cenchrus agrimonioides* (Kamanomano (=Sandbur, Agrimony))

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cenchrus agrimonioides* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Cenchrus agrimonioides* on Maui are the habitat components that provide: (1) Rough a'a lava scree (a) in mesic *Metrosideros polymorpha-Acacia koa* forest and (b) containing one or more of the following associated native plant species: *Alyxia oliviformis, Canthium odoratum, Carex* sp., *Diospyros* sp., *Styphelia tameiameiae,* or *Eragrostis variabilis;* and (2) elevations between 560 and 820 m (1,830 and 2,700 ft).

Family Poaceae: *Ischaemum byrone* (Hilo Ischaemum)

Maui units G, H, I, K, L, and M, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ischaemum byrone* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Ischaemum byrone* on Maui are the habitat components that provide: (1) Close proximity to the ocean, among rocks or on basalt cliffs (a) in coastal dry shrubland and (b) containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa,* or *Scaevola sericea;* and (2) elevations from sea level to 75 m (250 ft).

Family Poaceae: *Panicum niihauense* (Lau 'ehu)

Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's Bluegrass)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae,* or *Kokia kauaiensis;* and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian Bluegrass)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet, shaded, gentle or steep

slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Primulaceae: *Lysimachia filifolia* (No Common Name)

Kauai T, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus,* or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Primulaceae: *Lysimachia lydgatei* (No Common Name)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lysimachia lydgatei* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Lysimachia lydgatei* on Maui are the habitat components that provide: (1) Sides of steep ridges (a) in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* sp. montane forest and (b) containing one or more of the following associated native plant species: *Lycopodium* sp., *Ilex* sp., *Dodonaea viscosa, Vaccinium* sp., *Eurya* sp., *Styphelia tameiameiae, Coprosma* sp., *Ochna* sp., *Astelia* sp., *Broussaisia arguta* or mat ferns; and (2) elevations between 915 and 1,415 m (3,000 and 4,640 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (Kauila)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Colubrina oppositifolia* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Colubrina oppositifolia* on Maui are the habitat components that provide: (1) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Dodonaea viscosa, Canavalia* sp., *Wikstroemia* sp., *Canthium odoratum,* or *Reynoldsia sandwicensis;* and (2) elevations between 240–915 m (800 and 3,000 ft).

Family Rhamnaceae: *Gouania meyenii* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa, Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis, Bidens* sp., *Carex meyenii, Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii;* and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* (‘Awiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis coriacea* (Kio'ele)

Maui unit X, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis coriacea* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hedyotis coriacea* on Maui are the habitat components that provide: (1) Steep, rocky, slopes (a) in dry lowland *Dodonaea viscosa* dominated shrublands and (b) containing one or more of the following associated native plant species: *Sida fallax, Gouania hillebrandii, Bidens menziesii, Lipochaeta livarum, Myoporum* sp., or *Schiedea menziesii;* and (2) elevation of 470 to 2,300 m (1,540 to 7,550 ft).

Family Rubiaceae: *Hedyotis mannii* (Pilo)

Maui unit Q, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis mannii* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Hedyotis mannii* on Maui are the habitat components that provide: (1) Basalt cliffs along stream banks (a) in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and (b) containing one or more of the following associated native plant species: *Machaerina* sp., *Carex meyenii, Phyllostegia* sp., *Hedyotis acuminata, Cyrtandra platyphylla, Cyanea* sp., and *Isachne distichophylla;* and (2) elevation of 826 to 882 m (2,800 to 3,000 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali Beach Hedyotis)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hedyotis st.-johnii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis* or *Chamaesyce celastroides;* and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope adscendens* (Alani)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope adscendens* on Maui are the habitat components that provide: (1) A'a lava with pockets of soil (a) in *Nestegis sandwicensis-Pleomele* lowland mesic forest or open dry forest and (b) containing one or more of the following associated native plant taxa: *Pleomele auwahiensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Chamaesyce celastroides* var. *lorifolia, Santalum ellipticum, Pouteria sandwicensis, Styphelia tameiameiae* or *Xylosma hawaiiensis;* and (2) elevations between 768 and 1,220 m (2,520 and 4,000 ft).

Family Rutaceae: *Melicope haupuensis* (Alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (Alani)

(i.) Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis;* and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

(ii.) Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope knudsenii* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope knudsenii* on Maui are the habitat components that provide: (1) Forested flats or talus slopes (a) in *Nestegis-Pleomele* mixed open dry forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis;* and (2) elevations between 450 and 1,220 m (1,480 and 4,000 ft).

Family Rutaceae: *Melicope mucronulata* (Alani)

Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope mucronulata* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Melicope mucronulata* on Maui are the habitat components that provide: (1) Steep west or north-facing slopes (a) in lowland dry to mesic forest and (b) containing one or more of the following associated species: *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* or *Dubautia linearis;* and (2) elevations between 670 and 1,070 m (2,200 and 3,500 ft).

Family Rutaceae: *Melicope pallida* (Alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma hawaiiense;* and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (A‘e)

(i.) Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis,* and (b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla,* or *Dodonaea viscosa;* and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

(ii.) Maui unit Ss, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Zanthoxylum hawaiiense* on Maui are the habitat components that provide: (1) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, or montane dry forest containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla;* and (2) elevations between 550 and 1,740 m (1,800 and 5,710 ft).

Family Santalaceae: *Exocarpos luteolus* (Heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandvicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (Mahoe)

(i.) Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry slopes or gulches (a) in *Diospyros* sp., *Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

(ii.) Maui units Q, Rr, and Ss, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Alectryon macrococcus* var. *auwahiensis* on Maui are the habitat components that provide: (1) Mixed lowland dry forest containing one or more of the following associated native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nestegis sandwicensis, Streblus pendulinus,* or *Pleomele auwahiensis;* and (2) elevations of 360 to 1,070 m (1,180 to 3,510 ft). Within these units the currently known primary constituent elements of critical habitat for *Alectryon macrococcus* var. *macrococcus* on Maui are the habitat components that provide: (1) Dry slopes or gulches (a) in dense mesic mixed *Metrosideros polymorpha* forest or *Diospyros sandwicensis* forest which contain (b) one or more of the following associated native plant species: *Nestegis sandwicensis* or *Antidesma platyphylla;* and (2) elevations of 360 to 1,070 m (1,180 to 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* (‘Aiea)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* (‘Aiakeaakua, Popolu)

Kauai D, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Urticaceae: *Neraudia sericea* (No Common Name)

Maui units T and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Neraudia sericea* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Neraudia sericea* on Maui are the habitat components that provide: (1) Lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest containing one or more of the following associated native plant taxa: *Huperzia mannii, Urera glabra, Cyrtandra oxybapha, Cyrtandra platyphylla, Sida fallax, Diospyros* sp., *Bobea* sp., *Coprosma* sp., or *Hedyotis* sp.; and (2) elevations between 670 and 1,480 m (2,200 and 4,850 ft).

Family Violaceae: *Isodendrion laurifolium* (Aupaka)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis,* or *Pouteria sandwicensis;* and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (Aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (No Common Name)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (Nani Wai'ale'ale)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

(B) Ferns and Allies

Family Adiantaceae: *Pteris lidgatei* (No Common Name)

Maui units Q and Aa, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Pteris lidgatei* on Maui are the habitat components that provide: (1) Steep stream banks (a) in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and (b) containing one or more of the following native plant taxa: *Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa,* or *Sphenomeris chusana;* and (2) elevations between 915 and 1,070 m (3,000 and 3,500 ft).

Family Aspleniaceae: *Ctenitis squamigera* (Pauoa)

Maui units Q, T, Xx, and Zz, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units the primary constituent elements of critical habitat for *Ctenitis squamigera* on Maui are the habitat components that provide: Forest understory (a) in *Metrosideros polymorpha* montane wet forest, *Metrosideros polymorpha-Diospyros* sp. mesic forest or diverse mesic forest and (b) containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* sp., *Pleomele* sp., *Thelypteris globulifera, Sadleria* sp., *Doodia* sp., *Pittosporum* sp., *Dryopteris* sp., *Bobea* sp., *Antidesma* sp., *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. *kokio, Hedyotis formosa, Pritchardia forbesiana, Myrsine* sp., *Psychotria* sp., or *Xylosma* sp.; and (2) elevations between 380 and 1,000 m (1,250 and 3,280 feet).

Family Aspleniaceae: *Diellia erecta* (No Common Name)

Maui units Q, T, and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Diellia erecta* on Maui are the habitat components that provide: (1) Steep slopes or gulch bottoms in deep shade (a) in *Diospyros sandwicensis-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Nestegis* sp., *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp., *Pleomele auwahiensis, Syzygium sandwicensis,* or *Wikstroemia* sp.; and (2) elevations between 210 and 1,590 m (700 and 5,200 ft).

Family Aspleniaceae: *Diellia pallida* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Aspleniaceae: *Diplazium molokaiense* (No Common Name)

Maui unit Qq, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Diplazium molokaiense* on Maui. Within this unit the currently known primary constituent elements of critical habitat for *Diplazium molokaiense* on Maui are the habitat components that provide: (1) Proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and (2) elevations between 850 and 1,680 m (2,800 and 5,500 ft).

Family Grammitidaceae: *Adenophorus periens* (Pendant Kihi Fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-developed, closed canopy that provides deep shade or high humidity (a) In *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

Family Lycopodiaceae: *Phlegmariurus mannii* (Wawae‘iole)

Maui units Q, W, Jj, Kk, and Qq, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units the currently known primary constituent elements of critical habitat for *Phlegmariurus mannii* on Maui are the habitat components that provide: (1) As an epiphyte on *Metrosideros polymorpha,* and *Acacia koa* trees in moist protected gulches (a) in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests and (b) containing one or more of the following associated native plant taxa: *Thelypteris* sp., *Athyrium* sp., *Styphelia* sp., *Cyanea atra, Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Dodonaea viscosa, Astelia menziesii, Coprosma* sp., *Cheirodendron trigynum, Ilex anomala,* or *Myrsine* sp.; and (2) elevations from 900 to 1,600 m (2,950 to 5,250 ft).

Dated: November 29, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Federal Aviation Administration

14 CFR Part 25

Revision of Braking Systems; Airworthiness Standards to Harmonize With European Airworthiness Standards for Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–6063; Notice No. 99–16A]

RIN 2120–AG80

Revision of Braking Systems; Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking, (SNPRM).

SUMMARY: This document seeks public comment on changes proposed as a result of the comments received on Notice No. 99–16. The changes proposed in this supplemental notice would require an additional dynamometer test during brake qualification, namely, an accelerate-stop test with the brake heat sink in a new condition (also called a new brake rejected takeoff (RTO) test) for part 25 transport category airplanes. The new proposed brake test could result in a minimal cost increase for some part 25 small airplanes. These changes are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before February 16, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, NW, Washington, DC 20590–0001. You must identify the docket number FAA–1999–6063 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA has 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 comments to these proposed regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., 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: Mahinder K. Wahi, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2142; facsimile (425) 227–1320.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters must identify the regulatory docket or notice number and submit comments in duplicative to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The Docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1999–6063.'' The postcard will be date stamped and mailed to the commenter.

Availability of the SNPRM

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this notice.

Background

On August 10, 1999, the the FAA issued an NPRM titled ''Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes,'' Notice No. 99–16 (64 FR 43570), and two Notices of Availability, ''Proposed TSO–C135, Transport Airplane Wheels and Wheel and Brake Assemblies,'' and ''Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis.'' The related background material leading to Notice No. 99–16 and the notices of availability is as follows:

In 1988, the FAA, in cooperation with the JAA and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

Starting in 1992, the FAA's harmonization effort for various systems-related airworthiness requirements was undertaken by the ARAC. A working group of industry and government braking systems specialists of Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop a harmonized standard, such as a Technical Standard Order (TSO), for approval of wheels and brakes to be installed on transport category airplanes and to develop a draft notice of proposed rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents, such as advisory circulars, concerning new or revised requirements and the associated test conditions for wheels, brakes and braking systems, installed in transport category airplanes (§§ 25.731 and 25.735).

The harmonization task was completed by the working group and recommendations were submitted to the FAA by a letter dated May 1, 1998. The FAA concurred with the

recommendations and proposed them in Notice No. 99–16. A notice of availability of proposed TSO–C135 and request for comments and a notice of availability of proposed AC 25.735–1X and request for comments were also published in the **Federal Register** on August 10, 1999 (64 FR 43579). On August 25, 1999, the JAA issued two Notices of Proposed Amendment (NPA) 25D–291 and NPA TSO–7: ''Brakes and Braking Systems'' that included the proposed advisory material AMJ 25.735. The amendments proposed in NPA 25D–291 and the advisory material proposed in AMJ 25.735 were substantively the same as the amendments proposed by the Notice No. 99–16 and the advisory material in proposed AC 25.735–1X. The NPA TSO–7 was substantively the same as proposed TSO–C135.

As a result, the FAA and JAA each received a set of comments from the public in response to the proposed rule, the proposed TSO, and the proposed AC. These two sets of comments are interlinked and addressed jointly by the FAA in preparing this SNPRM.

Discussion of Comments: Notice 99–16

Twenty-one commenters responded to the request for comments contained in Notice No. 99–16, the notices of availability of proposed TSO–C135 and AC 25.735–1, and the corresponding JAA documents NPA 25D–291, NPA TSO–7, and AMJ 25.735. Comments were received from eight (8) foreign and domestic airplane and brake manufacturers, nine (9) foreign airworthiness authorities, one operator and three (3) foreign and domestic industry organizations. The majority of the commenters agree with the proposal and recommend its adoption. However, some commenters disagree with the proposal while providing alternative proposals that appear to merit further consideration by the ARAC. Therefore, the FAA tasked the ARAC Braking Systems Harmonization Working Group (HWG) by letter dated February 8, 2000, to consider the comments and provide recommendations for the disposition of the comments along with any recommendations for changes to the proposal. Proposal 11 is the only proposal relevant to this SNPRM. The disposition of the comments below is based on the agreement reached by the HWG.

Proposal 11, § 25.735(f)

The proposed paragraph § 25.735(f) in Notice No. 99–16 reads as follows:

(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

Comment: One commenter states that as proposed, § 25.735(f) is difficult to read and contains too many separate requirements in itself. It could create undue difficulties during the finding of compliance. It is suggested that the paragraph be re-arranged such that:

- There is a distinct sub-paragraph that can be identified for the requirement for the determination of the levels of kinetic energy and the energy absorption rates. This paragraph should indicate that three cases are to be considered (design landing stop, accelerate-stop, and most severe landing stop). This sub-paragraph could also mention the caveats about the need to consider, or not consider, during testing the most severe landing stop.
- There is a distinct sub-paragraph for the requirement for the wheel and brake assembly to meet the levels of kinetic energy.
- There is a distinct sub-paragraph for the requirement for the wheel and brake assembly to meet the energy absorption rates.
- The definitions of the three stop cases (the last 9 lines of the currently proposed paragraph, starting with: ''. . . Design landing stop is an operational . . . '') are taken out of the requirement and placed in the proposed AC 25.735–1X.

The FAA concurs that rearranging § 25.735(f) into three distinct sub-paragraphs clarifies the requirement. The FAA, however, decided that it is more appropriate to retain the definitions as part of the regulatory text, since this is the only place where these terms are identified.

The text of this paragraph is divided into three subparagraphs f(1), f(2), and f(3) with appropriate headings. The subparagraphs cover each of the three tests and include the definitions.

Comment: Two commenters suggest adding a requirement that the accelerate-stop test, reference: paragraph 3.3.3.2 of the proposed TSO–C135, and § 25.735(f) of Notice No. 99–16, must be completed on both a new brake and a fully worn brake. The fully worn brake is the worst case condition for energy absorption capability, however, the new brake condition is the worst case condition for performance for some heat sink materials. (The heat sink is the mass of the brake that is primarily responsible for absorbing energy during a stop. For a typical brake, this would consist of the stationary and rotating disc assemblies.)

The FAA concurs with this comment. Applicable text in the TSO–C135 paragraph 3.3.3.2, and the new § 25.735(f)(2) in this SNPRM add a new brake accelerate-stop test requirement with the new brake defined as a brake worn no more than 5 percent of its usable wear range. The accelerate-stop applicable portion of § 25.735(f) text, Notice No. 99–16, is revised from ''It must be substantiated by dynamometer testing that, at the declared fully-worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy'' to ''(f)(2): It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake.'' Although, not a part of the TSO, large airplane manufacturers currently require a new brake RTO test as part of brake qualification. Small airplane manufacturers may experience a cost increase of $20,000 per certification.

The New Proposal

The revised proposed rule reads as follows:

(f) *Kinetic energy capacity*

(1) *Design landing stop:* The design landing stop is an operational landing stop at maximum landing weight. The design landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the

airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 10 fps^2.

(2) *Maximum kinetic energy accelerate-stop:* The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate defined by the airplane manufacturer must be achieved. The mean deceleration must not be less than 6 fps^2.

(3) *Most severe landing stop:* The most severe landing stop is a stop at the most critical combination of airplane landing weight and speed. The most severe landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe.

The rulemaking proposal contained in this supplemental notice is based on a recommendation developed by the Braking Systems Harmonization Working Group, and presented to the FAA by the ARAC as a recommendation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Compatibility with ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. For this SNPRM, the FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards, and, where appropriate, to use those standards as the basis of U.S. standards. Fourth, Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. In conducting these analyses, the FAA has determined that this supplemental proposal: (1) Would generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in Executive Order 12866 or in the Department of Transportation's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) would not constitute a barrier to international trade, and (4) does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

These analyses, available in the docket, are summarized below. All estimates are expressed in year 2000 dollars.

Regulatory Evaluation Summary

Summary of Major Economic Issues in NPRM 99–16

Of several revisions proposed for 14 CFR 25.735, only one, proposal 11, was expected to impose additional costs, estimated at $20,000 to $60,000 (the latter upper estimate has been reduced to $40,000) for part 25 large airplanes and $20,000 (as explained below, the latter estimate has been increased to a range of $20,000 to $40,000) for part 25 small airplanes. Most of the changes codify current industry practice or conform 14 CFR 25.735 to corresponding sections of the JAR. The resulting regulatory harmonization would eliminate unnecessary duplication of airworthiness requirements, thus reducing manufacturers' certification costs.

None of the commenters disputes FAA's estimates of specific incremental certification costs. One commenter, however, questions FAA's contention that costs would be balanced by the savings from rule harmonization, and further objects to the vagueness of the expected safety benefits. The FAA disagrees with the latter commenter's synopsis of the benefits' conclusion in the NPRM. The FAA did not contend that quantified benefits from averted future accidents alone would economically justify the proposed rule. Although total harmonization savings were not specified, the FAA nevertheless stated that ''according to one manufacturer, cost savings from harmonization * * * would be equal to or greater than the maximum incremental cost of $60,000.'' The FAA also noted that ''potential safety benefits resulting from specification of minimum accepted standards would supplement these cost savings.'' In addition, even though none of the previous accidents would have been directly preventable by the proposed amendments, ''different designs in future type certifications, however, could present other problems (unexpected) and raise future accident rates.''

Notwithstanding the above, since publication of Notice 99–16, the FAA has contacted industry sources to obtain estimates of harmonization cost savings attributable to the revisions originally proposed in the Notice. These cost savings would be, at a minimum, between $50,000 and $75,000 for a part 25 small airplane type certification and $100,000 to $300,000 for a part 25 large airplane type certification. These harmonization benefits would exceed the incremental costs of all the revisions specified in the NPRM as well as the costs attributable to the SNPRM change.

Supplemental Change and Associated Costs and Benefits

The proposed dynamometer test, also called a new brake rejected takeoff (RTO) test, is currently conducted by brake manufacturers as specified by large airplane manufacturers during brake qualification testing and is considered standard industry practice. For some manufacturers of part 25 small airplanes, however, the proposed test could result in a cost increase of

$20,000 per type certification (thus increasing incremental costs for proposal 11 in the NPRM from an estimated $20,000 to a range of $20,000 to $40,000). This incremental but nonrecurring cost for some manufacturers of part 25 small airplanes would easily be offset by the harmonization cost savings cited earlier. Any potential safety benefits from avoiding even one minor accident would add to such benefits. The FAA, therefore, finds the additional change to proposal 11 to be cost beneficial for both part 25 small and large airplane manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a ''significant economic impact on a substantial number of small entities.'' If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This SNPRM would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For airplane manufacturers, a small entity is one with 1,500 or fewer employees. Since no part 25 airplane manufacturer has 1,500 or fewer employees, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small manufacturers.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to United States' companies doing business in foreign markets, and foreign companies doing business in the United States.

The subject proposal is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result would be a positive step toward removing impediments to international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This supplemental proposal does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this proposed rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Amend § 25.735 for revising the heading and paragraph (f) to read as follows:

§ 25.735 Brakes and braking systems.

* * * * *

(f) *Kinetic energy capacity*

(1) *Design landing stop:* The design landing stop is an operational landing stop at maximum landing weight. The design landing stop brake kinetic energy

absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 10 fps.[2]

(2) *Maximum kinetic energy accelerate-stop:* The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate defined by the airplane manufacturer must be achieved. The mean deceleration must not be less than 6 fps.[2]

(3) Most severe landing stop: The most severe landing stop is a stop at the most critical combination of airplane landing weight and speed. The most severe landing stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel, brake and tire assembly is capable of absorbing not less than this level of kinetic energy. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe.

* * * * *

Issued in Renton, Washington on December 4, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31927 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Reduced Vertical Separation Minimum (RVSM); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–8490; Notice No. 00–16]

RIN 2120–AH12

Reduced Vertical Separation Minimum (RVSM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would add the New York Flight Information Region (FIR) portion of the West Atlantic Route System (WATRS) to the airspace where Reduced Vertical Separation Minimum (RVSM) may be applied. RVSM saves fuel and minimizes traffic delays by accommodating greater numbers of aircraft in the most fuel-efficient routes available. This is accomplished by reducing the vertical separation between aircraft that fly in RVSM airspace. Safety is maintained by restricting RVSM airspace to aircraft with approved equipment that is operated by crews with proper training to assure high levels of long-range navigation precision. International RVSM planning groups have agreed to implement RVSM in the New York Flight Information Region (FIR) portion of WATRS on November 1, 2001. This NPRM also proposes to require aircraft that are equipped with Traffic Alert and Collision Avoidance System (TCAS) to incorporate a version of TCAS that is compatible with RVSM operations.

DATES: Comments must be submitted on or before February 16, 2001.

ADDRESSES: Address your comments 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–2000–8490 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the 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 comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office 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: Dave Maloy, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (860) 654–1006.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as you may desire. You are also invited to submit comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Your comments should identify the regulatory docket number and you should submit two copies of your comments to the address shown above.

Because this proposed rule was developed as a result of an international agreement, comments deemed substantive will be presented for consideration and reviewed by the international community under the auspices of the International Civil Aviation Organization (ICAO). If considered relevant, the comments will be included for use by all participating member States.

All comments received will be available both before and after the closing date for comments in the Department of Transportation Docket for examination by interested persons.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2000–8490.'' The FAA will date, time stamp, and return the postcard.

Availability of This Document

You may download an electronic copy of this document, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this proposed rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this NPRM.

Background

Introduction

Below flight level (FL) 290 (29,000 feet), air traffic controllers can assign aircraft operating under Instrument Flight Rules (IFR) altitudes a minimum of 1,000 feet apart. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet.

RVSM is the reduction of vertical separation of aircraft from the conventional 2,000 feet of separation to 1,000 feet of separation between flight levels (FL) 290 (29,000 feet) and 410 (41,000 feet). RVSM is authorized only for aircraft flying in RVSM airspace that have equipment and training to maintain long term navigation precision.

Flight levels are stated in digits that represent hundreds of feet. The term flight level is used to describe a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (in the United States, 18,000 feet) on this standard reference. FL 290 represents the pressure surface equivalent to 29,000 feet based on the 29.92″ Hg datum; FL 310 represents 31,000 feet, and so on.

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft crossing oceanic airspace operate most economically. At peak hours these flight levels can become congested When all RVSM flight levels (FL290–410) are utilized, six additional flight levels are available: FLs 300, 320, 340, 360, 380 and 400.

RVSM has been successfully established in the North Atlantic (NAT) and in Pacific airspace. Increasing the number of flight levels available in the WATRS airspace is projected to enhance operator benefits in a similar way to those achieved in the NAT (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks).

This proposed rule complies with international agreements under which the international aviation community, including the United States, plans to implement RVSM in the New York FIR portion of the WATRS airspace. Based on three years of successful RVSM operations in the NAT, the users, Air Transport Association (ATA), International Air Transport Association (IATA), International Civil Aviation Organization (ICAO), and the New York Oceanic Capacity Enhancement Task Force (NYOCETF) have requested the FAA to implement RVSM in WATRS airspace as well.

Why RVSM in WATRS Airspace Is Necessary

Air traffic in WATRS airspace has increased steadily in the past few years and is projected to continue to increase. Between 1997 and 1999, the annual traffic count in the WATRS airspace increased from 72,020 to 109,044 flights. This represents an increase of 51 percent. This is a result of several years of economic downturn followed by a resurgence of activity. The Office of International Operations for New York Center estimates a similar increase over at least the next several years, assuming the economy stays healthy. A substantial portion of the increase is the Europe to Caribbean traffic that overflies the WATRS airspace.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

RVSM Has Been Implemented Successfully in the North Atlantic (NAT) and in the Pacific

With air traffic levels increasing annually worldwide, FAA airspace planners and their international counterparts continually explore methods of enhancing the air traffic control (ATC) system's ability to accommodate traffic in a safe and efficient manner. NAT MNPS (Minimum Navigation Performance Specifications) airspace was chosen to be the first airspace for RVSM introduction because it is the busiest oceanic airspace in the world and traffic is forecast to continue to increase. The NAT Traffic Forecasting Group Report shows that the number of annual flight operations increased 28 percent between 1993 and 1998 with a forecast 65 percent rise over the 1994 level of 164,500, by 2004.

On March 27, 1997, RVSM was implemented from FL 330 to FL 370 in the NAT MNPS. On October 8, 1998 the RVSM airspace was increased from FL 310 to FL 390 (inclusive). In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between FLs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet.

All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, § 91.705 and vertical navigation performance standards of part 91, § 91.706. Operators must follow procedures that ensure the standards are met. Flight crews must also be trained on RVSM policy and procedures. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT RVSM/MNPS airspace.

The North Atlantic Systems Planning Group (NATSPG) Central Monitoring Agency (CMA) monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

Pacific RVSM was implemented on February 24, 2000. The Asia/Pacific Approval Registry and Monitoring Agency performs the function of the CMA in the Pacific.

Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than those requested by the operators in their filed flight plans. These flights were, therefore, generally conducted at less than optimum tracks and altitudes for the aircraft, resulting in time and fuel inefficiencies.

The NAT Implementation Management Group (IMG) has observed the following improvements in NAT operations due to the introduction of RVSM:

1. Fifty percent of the fuel penalty attributed to NAT system operation was eliminated. The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level and traffic congestion penalties.
2. Twenty five percent fewer fixed tracks were required to be published. This allows more airspace for operators to fly preferred tracks.
3. There was a five percent increase in flights cleared to fly both at the altitude and on the track that the operator requested.

Most WATRS Operators Already Have Experience With RVSM

Approximately 60% of the operations in the WATRS airspace are conducted by aircraft and operator combinations that already have experience with RVSM operations. This is because some of the WATRS operators conduct operations worldwide and therefore, have been required to obtain RVSM approval to operate in NAT and Pacific RVSM airspace. Aircraft that have been approved for RVSM are approved for RVSM in any area of the world where it is applied. This high percentage of operators that already have RVSM experience has encouraged WATRS planners to expeditiously implement RVSM in WATRS airspace.

Applying RVSM to the New York Flight Information Region (FIR) of WATRS

The New York Oceanic Capacity Enhancements Task Force (NYOCETF) provides oversight for plans and policy related to:

1. Changes to separation minima
2. Issues relating to traffic management
3. Airspace/ATS Routes
4. Standardization of ATC and Operator procedures
5. Contingency procedures
6. Communication issues
7. Status of oceanic ATC automation

The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the WATRS airspace.

Projected increases in WATRS air traffic and the successful implementation of RVSM operations in the NAT and the Pacific support the implementation of RVSM in WATRS airspace. WATRS operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The NYOCETF is developing WATRS RVSM implementation plans. The New York ARTCC Plans and Procedures Manager chair the Task Force. The Task Force chairperson and representatives will oversee the two phases of the WATRS implementation process, which are (1) the system verification phase and (2) the initial operational capability/operational trials phase.

System Verification Phase

During the system verification phase, unapproved aircraft will continue to be separated vertically by 2,000 feet. Operators and aircraft that have not already been approved for RVSM will begin to receive RVSM approval in accordance with § 91.706 and Appendix G (or their equivalent for foreign operators). The overall objectives of the system verification phase are to:

1. Confirm that the target level of safety (TLS) will continue to be met.
2. Confirm that aircraft approved for RVSM operation demonstrate altitude-

keeping performance that meets RVSM standards. This will be achieved by:

- Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups and
- Monitoring a sample of RVSM-approved aircraft and operators that is representative of the total population.

3. Verify that operational procedures adopted for RVSM are effective and appropriate.

4. Confirm that the altitude-monitoring program is effective. The principal purpose of this phase has been to gain confidence that the operational trial phase can begin.

Initial Operational Capability/ Operational Trials Phase

When the objectives of the system verification phase have been met, initial operational capability will be declared and RVSM will be implemented at designated flight levels. The first year after implementation is considered the operational trials phase. The objectives of the operational trial phase are to:

1. Continue to collect altitude-keeping performance data.

2. Increase the level of confidence that safety goals are being met.

3. Demonstrate operationally that there are no difficulties with RVSM implementation.

Beginning November 1, 2001, only RVSM approved operators and aircraft will be cleared to operate in the New York FIR portion of the WATRS airspace between FLs 290 and 410 (inclusive). Aircraft that are not RVSM compliant (*e.g.,* State aircraft, ferry and maintenance flights) will only be cleared to operate between FLs 290 and 410 (inclusive) after coordination with the first and notification given to subsequent oceanic centers. Notification constitutes approval. A 2,000-foot vertical separation will be applied to such aircraft.

Provided that all requirements continue to be met, at the end of one year, RVSM will be declared fully operational.

Altitude-Keeping Performance

For the past three years, the FAA, in conjunction with the NATSPG, has monitored aircraft altitude-keeping performance of RVSM approved aircraft. A major objective of monitoring is to establish that the altitude-keeping performance of the aircraft fleet operating in airspace where RVSM is applied continues to meet minimum requirements.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. In the past three years, 42,648 measurements of altimetry system error have been taken for over 3,400 different airframes. Those measurements have shown that the altitude-keeping performance of aircraft approved for RVSM operations is significantly better than the minimum requirement. For group aircraft, the ASE requirement established for RVSM is that average ASE not exceed 80 feet and 99.9% of ASE observed not exceed 245 feet. The monitoring results have shown that actual average ASE is −4 feet and 99.9% of ASE is within 156 feet.

The FAA has determined that the appropriate method of assessing collision risk is the Reich collision risk model (CRM). As noted in AC No. 91–70, Oceanic Operations, collision risk refers to the number of midair accidents likely to occur due to the loss of separation in a prescribed volume of airspace for a specific number of flight hours.

Collision Risk Methodology (CRM) was used to develop the requirements for safe implementation of a 1,000-foot vertical separation standard. The United States supported the methodology used to derive the accepted level of safety for RVSM implementation.

The TLS that is being used in the NAT, the Pacific, and the WATRS airspace to assess safety is no more than five fatal accidents in 1 billion flying hours. The level of safety was developed using historical data on safety from global sources. One precedent used was a period of 100 to 150 years between midair collisions. When the TLS of 5 accidents in a billion flying hours is projected in terms of a calendar year interval between accidents in the WATRS, it yields a theoretical interval between midair collisions of more than 600 years. The accepted level of safety is consistent with the acceptable level for aircraft hull loss and is based on the precedence of extremely improbable events as they relate to system safety, the basis for certain requirements in certification regulations such as 14 CFR 25.1309.

To ensure that the TLS is met, the FAA is monitoring the total vertical error (TVE) and the remaining CRM parameters that are critical for safety assessment (probability of lateral and longitudinal overlap). TVE is defined as the geometric difference between the aircraft and the flight level altitude. To monitor TVE, the FAA has deployed measurement systems that will produce estimates of aircraft and flight level geometric altitude. The overall goal of monitoring is to ensure that airworthiness, maintenance, and operational approval requirements result in required system performance (and level of safety) in the flight environment on a continuing basis. One such measurement/monitoring system is a Global Positioning System (GPS)-based monitoring system (GMS). The GMS has been used extensively in the NAT along with ground based Height Monitoring Units (HMUs).

The on-going assessment of risk in the NAT over the past two years has shown that the TLS of 5 accidents in 1 billion flight hours can be met. All sources of error related to aircraft performance and to human error have been assessed.

Current Requirements

The FAA published 14 CFR 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace.) and Appendix G to Part 91 (OPERATIONS IN REDUCED VERTICAL SEPARATION MINIMUM (RVSM) AIRSPACE) in April 1997. They are based on the ICAO Manual on RVSM, NAT Doc 9574. Technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed the criteria in a joint FAA/ JAA working group. Section 91.706 requires that aircraft and operators meet the requirements of Appendix G and receive authorization from the FAA prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

Flight Standards Handbook Bulletin for Air Transportation (HBAT) 99-11A and General Aviation (HBGA) 99-17A entitled ''Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where 1,000 foot Vertical Separation Minimum Is Applied'', has been distributed through Flight Standards District Offices (FSDOs). This document provides guidance to FAA Flight Standards inspectors on the process and procedures to follow before approving an operator and its aircraft for RVSM operations. It details inspector responsibilities for assessment of airworthiness approval, maintenance program approval, and operations approval requirements in the rule. It discusses timing, process, and maintenance and operations material that the operator should submit for FAA

review and evaluation normally at least 60 days before the planned operation in RVSM airspace. Operators under Title 14, Code of Federal Regulations (14 CFR) part 91 receive FAA approval in the form of a Letter of Authorization (LOA), and operators under 14 CFR parts 121, 125, and 135 receive Operations Specifications (OPS–SPEC) approval.

For operations over the high seas outside the United States, 14 CFR 91.703 requires that aircraft of U.S. registry comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation. Annex 2, amendment 32, effective February 19, 1996, reflects the change from 2,000 feet to 1,000 feet vertical separation for Instrument Flight Rules (IFR) traffic between FL 290 and FL 410, based on appropriate airspace designation, international agreements, and conformance with specified conditions.

General Discussion of the Proposal

The proposal would allow operation of civil aircraft of U.S. registration in WATRS airspace where RVSM is applied. It is based on improvements in altitude-keeping technology. These improvements include:

• Introduction of the air data computer (ADC), which provides an automatic means of correcting the known static source error of aircraft to improve aircraft altitude measurement capability.

• Development of altimeters with enhanced transducers or double aneroid for computing altitude.

Under this proposal, airspace or routes in the WATRS airspace where RVSM is applied would be considered special qualification airspace. Both the operator and the specific types of aircraft that the operator intends to use in RVSM airspace would have to be approved by the appropriate FAA office before the operator conducts flights in RVSM airspace.

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

• Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are able to fly closer to their optimum altitude at initial level off and through step climbing to the optimum altitude during the enroute phase.

• Greater availability of the most time and fuel-efficient tracks and routes (and an increased probability of obtaining these tracks and routes). Operators often are not cleared on the track or route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. RVSM allows ATC to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.

• Increased controller flexibility. RVSM gives ATC greater flexibility to manage traffic by increasing the number of flight levels on each track or route.

• Reduction of pilot and controller work load. When controllers are required to re-route aircraft from their filed track and/or altitude they are required to re-coordinate and revise clearances. Pilots are required to re-program aircraft navigation systems (which has been a major cause of navigational errors). RVSM will reduce the number of re-routes required and therefore reduce both pilot and controller workload.

• Enhanced flexibility to allow aircraft to fly across route systems. Operators are often required to remain at lower, less fuel-efficient altitudes until the aircraft crosses a route system. RVSM makes more flight levels available at higher, more fuel-efficient altitudes to allow aircraft to cross route systems.

• Enhanced safety in the lateral dimension. Studies indicate that RVSM produces a wider distribution of aircraft among different tracks and altitudes, resulting in less exposure to aircraft at adjacent separation standards. RVSM reduces the number of occasions when two aircraft pass each other separated by a single separation standard (e.g., 60 NM laterally). The benefit to safety is that, in the event of a gross navigation error, the deviating aircraft is less likely to find another aircraft on the adjacent route at the same flight level.

This amendment to 14 CFR part 91, appendix G, section 8 would add the New York FIR portion of the WATRS airspace to the list of airspace where RVSM can be applied.

TCAS (Traffic Alert and Collision Avoidance System) II, Version 7 for RVSM Operations

Currently, 14 CFR 121.356, 125.224, and 135.180 require that certain aircraft be operated with TCAS II, or an equivalent, and the appropriate class of Mode S transponder. Certain other aircraft may be operated with TCAS I or an equivalent. Airworthiness Directives issued to the avionics manufacturers in 1994 require that those aircraft that are required to be TCAS II equipped be equipped with TCAS II, Version 6.04 Enhanced. Approximately 90% of the flights now conducted in RVSM airspace are equipped with TCAS II, version 6.04 Enhanced.

This proposed rule would require that aircraft operated in RVSM airspace and equipped with TCAS II, be modified to incorporate collision avoidance system logic software version 7.0, or a later version. This requirement is added because, as further explained below, only version 7.0 incorporates revised alert thresholds for traffic alerts (TA) and resolution advisories (RA) for flight levels (FL) 300 through FL 420 that are compatible with RVSM operations. The alert thresholds in Version 6.04 Enhanced are not totally compatible with RVSM operations. This proposal is specifically related to TCAS II operating characteristics needed in RVSM airspace and would not amend or be affected by rules that require that TCAS be installed in an aircraft.

TCAS I is compatible with RVSM operations and no modifications are necessary.

Why This Proposed Rule Would Require Version 7 of TCAS II

1. Background

RVSM was implemented in North Atlantic Minimum Navigation Performance Specifications Airspace (NAT MNPSA) in March 1997. In preparation for RVSM implementation, the North Atlantic System Planning Group (NATSPG) Operations/Airworthiness (Ops/Air) group reviewed the effect that RVSM would have on the operation of TCAS II, Version 6.04 Enhanced in NAT oceanic airspace. The group recognized that TCAS II, Version 6.04 Enhanced was designed with a TA alert threshold of 1,200 feet for FL 300 through FL 420 and would produce inappropriate TA's for aircraft that were separated in RVSM airspace by 1,000 feet vertically, especially in certain situations. For example, the group recognized that in situations where two aircraft were separated by 1,000 feet vertically and one nautical mile or less longitudinally, on the same track and proceeding in the same direction at approximately the same speed, TA's could be received in the cockpit repeatedly over an extended period of time. The group observed, however, that the traffic levels in oceanic airspace are low relative to continental operations and operations are relatively stable (*i.e.,* aircraft generally climb or descend infrequently). For this reason, it concluded that TCAS II, Version 6.04 Enhanced was acceptable during the early stages of RVSM operations in oceanic airspace provided pilots were informed on the operating characteristics of TCAS II, Version 6.04 Enhanced operations in RVSM airspace. To do this, the group developed and

distributed a document to educate pilots on these characteristics. The document also recommended that pilots limit their vertical speed to 1,000 feet per minute when close to other aircraft to reduce the number of unnecessary alerts.

RVSM has been implemented for over 3 years in North Atlantic airspace and since February 2000 in the Pacific Oceanic Flight Information Regions. In that time, TCAS II, Version 6.04 Enhanced has proven generally acceptable for RVSM operations in oceanic airspace, however, multiple TA events have, in fact, been found to occur in situations where aircraft are on the same track, speed and direction with one nm or less longitudinal spacing.

2. Effect on Safety

TCAS provides an aural TA in the form of the announcement ''Traffic, Traffic'' in the cockpit. The ''Traffic, Traffic'' announcement repeated over a period of time distracts the pilot from the execution of his or her duties and produces the potential to cause a pilot error. As an example, during the flight, pilots program navigation computers with a series of numbers representing positions on the route of flight. A distraction while programming the navigation computer can cause the pilot to make an error that results in the aircraft straying from its assigned route and posing a hazard to itself and other aircraft.

3. Increase in RVSM Operations

As air traffic increases in areas where RVSM is currently implemented and as RVSM is implemented in new areas, there will be more aircraft conducting RVSM flights and increased exposure to distracting TA's. Air traffic in NAT and Pacific oceanic airspace where RVSM has already been implemented is projected to increase 4–6% each year. New RVSM implementations are planned in the near future in airspace over the Western and South Atlantic, the western Pacific, and the Caribbean. The number of RVSM flights will continue to increase and therefore, the probability of aircraft experiencing distracting multiple TA's will also increase.

4. TCAS II, Version 7.0 Compatibility With RVSM Operations

To avoid the potential for an increase in distracting TA's that can lead to pilot errors, aircraft that are used in RVSM operations that are equipped with TCAS II systems must be modified to incorporate a version of TCAS that is compatible with RVSM operations. TCAS II, version 7.0 was designed to be compatible with RVSM operations and mitigates the occurrence of unnecessary TA's in RVSM operations. In TCAS II, version 7.0, the TA alert threshold between flight levels 300 and 420 is reduced from 1,2000 feet to 850 feet. This revision will eliminate unwarranted TA's between aircraft that are correctly separated by 1,000 feet vertically in RVSM airspace.

5. ICAO and Foreign Standards

ICAO Annexes and civil aviation authorities in foreign countries have already established standards and requirements for specified aircraft to be equipped with TCAS II, version 7. ACAS II is the ICAO term that describes aircraft collision avoidance systems and related equipment. To comply with ICAO ACAS II Standards, version 7 must be incorporated in TCAS II. The aircraft covered and compliance dates for ACAS II (TCAS II, Version 7) are discussed in the paragraphs below.

a. Part 91, Section 91.703 Requirements Applicable to U.S. Operators

Various countries through out the world have adopted the ICAO Annex 6 requirements discussed below for ACAS II equipage in their airspace. In some major areas, countries and regions have adopted accelerated equipage compliance dates. Because 14 CFR 91.703 requires U.S. operators to comply with the regulations of the countries in which they are operating, the ACAS II equipage requirements of foreign countries have already required U.S. operators to plan to equip with Version 7.

Section 91.703 is entitled ''Operations of civil aircraft of U.S. registry outside of the United States''. Paragraph 91.703(a)(2) states that each person operating a civil aircraft of U.S. registry outside the United States shall ''[w]hen within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force''.

b. ICAO Annex 6 Standards for ACAS II Equipage

ICAO Annex 6 (Operation of Aircraft), Part 1 (International Commercial Air Transport—Aeroplanes), paragraph 6.18 contains standards calling for TCAS II, Version 7 (ACAS II) equipage for specified aircraft by 1 January 2003. Paragraph 6.18 is entitled ''Aeroplanes required to be equipped with an airborne collision avoidance system (ACAS II). Specifically, it states that all turbine-engine aircraft with a maximum certified take-off mass (gross weight) that exceeds 15,000 kg (33,000 pounds) or authorized to carry more than 30 passengers shall be equipped with ACAS II by January 1, 2003. Annex 6 also calls for all aircraft to be equipped with a pressure altitude reporting transponder that operates in accordance with the relevant provisions of ICAO Annex 10.

c. Asia/Pacific Regional Standards for ACAS II

The ICAO Regional Supplements for the Middle East/Asia and the Pacific are published in the ICAO document entitled ''Regional Supplementary Procedures'' (ICAO Doc 7030). Those regional supplements call for TCAS II, Version 7 equipage for the aircraft specified in Annex 6 by 1 January 2000. Since version 7 was not widely available from avionics manufactures, most aircraft were not able to meet that date. In response, the Asia/Pacific Air Navigation Planning and Implementation Regional Group (APAN/PIRG) has adopted a regional policy that calls for the specified aircraft to be equipped by January 1, 2002.

d. North Atlantic Regional Standards for ACAS II

The ICAO Doc 7030 Regional Supplement for the NAT Region calls for TCAS II, version 7.0 equipage for the aircraft specified in Annex 6 by March 31, 2001. The ICAO NAT Region encompasses most of WATRS airspace.

e. European Country Requirements for ACAS II

The requirements for ACAS II equipage in European countries have been published in the European Regional Supplements contained in ICAO Doc 7030. European Supplement paragraph 16.1 (Carriage and operation of ACAS II) calls for the aircraft specified in Annex 6, Part 1 to be ACAS II equipped by 1 January 2000. In response to the lack of availability of version 7, the European Civil Aviation Conference (ECAC) member States have granted exemptions to allow aircraft to continue to operate until 31 March 2001 with TCAS, Version 6.04 Enhanced.

f. Requirements for TCAS II, Version 7 in Countries in the Pacific and Asian Regions

The ICAO Bangkok office has conducted a survey of countries in Asia and the Pacific to determine those countries that have established or plan to establish requirements for ACAS II equipage in their airspace. To date, 28 countries have established or are developing requirements for operators to equip by the ICAO Annex 6 compliance date of 1 January 2003 or sooner. This list includes: Australia, China, Japan, Korea, New Zealand and Singapore.

6. Effect of Linking TCAS II, Version 7 Equipage to RVSM Operations

The proposal is that aircraft used in RVSM operations and equipped with TCAS II be equipped version 7.0 because it is compatible with RVSM operations. Because other countries and ICAO Regions are already requiring ACAS II (Version 7), however, the economic and aircraft engineering impact directly related to this proposal will be minimal.

RVSM is currently applied only in certain major oceanic airspaces outside the US—the NAT and Pacific. As detailed above, requirements for TCAS, Version 7 have already been established for operators and aircraft operating outside the US to destinations in Europe, Asia and the Pacific. Since operators will already be required to equip with TCAS II, Version 7 to operate in the airspace of most countries in the Pacific and European regions, the effect of requiring TCAS II, version 7.0 for RVSM operations after march 31, 2002 will be minimal.

7. Justification for Compliance Date

The FAA proposes that operators be required to incorporate Version 7.0 software into TCAS II equipment when used in RVSM operations after March 31, 2002. The following are factors the FAA considered in arriving at this proposed date.

First, an earlier date has not been proposed because adequate numbers of Version 7.0 units and upgrade kits have not been available to operators. This is one reason that European aviation authorities delayed to TCAS II, Version 7.0 requirement for European airspace to March 31, 2001. A large number of U.S. operators will be complying with the European requirements for their operations. In proposing a compliance date for this amendment, the FAA has allowed adequate time for additional Version 7.0 units and upgrade kits to be made available following the European compliance date, for other operators. This will allow 12 months after the initial demand for Version 7.0 to meet the European requirement, for adequate numbers of modified TCAS units to be made available to operators not covered by the European requirement.

Second, incorporation of version 7.0 in TCAS II units is not a major aircraft engineering effort. Incorporation of version 7.0 is a software change. Existing equipment is removed from the aircraft and the Version 7.0 software modification is accomplished by an authorized service facility. Considering these factors, the FAA believes establishing a requirement for incorporation of version 7.0 for operations after March 31, 2002 will provide adequate time for all aircraft operating in RVSM.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 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 the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

This proposal amends 14 CFR part 91, appendix G, section 8 (Airspace Designation) by adding the New York FIR portion of the WATRS airspace to the list of airspaces where RVSM would be implemented. The benefits of this proposed rulemaking are (1) an increase in the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $26.0 million for the fifteen-year period 2001–2015 or $23.3 million, discounted. The costs can be considered voluntary as they would be incurred only by operators that participate in WATRS RVSM. However, operators of non-RVSM aircraft would still be able to fly above or beneath the WATRS RVSM airspace. Benefits would begin accruing in 2001. Estimated benefits, based on fuel savings for the commercial aircraft fleet over the years 2001 to 2015, would be $34.7 million or discounted at $19 million.

In addition to fuel savings, many non-quantifiable or value-added benefits would result from the implementation of RVSM in WATRS. Input from air traffic managers, controllers, and operators has identified numerous additional benefits.

Through implementation of RVSM in the North Atlantic (NAT) and Pacific (PAC) regions, operators and controllers have realized some additional benefits. The major additional benefits as identified by air traffic managers and controllers are:

- Enhanced capacity
- Reduced airspace complexity
- Decreased operational errors in these regions
- Reduction of user-requested off course climbs for altitude changes
- Improved flexibility for peak traffic demands
- More options in deviating aircraft during periods of adverse weather.

The benefits outlined above for RVSM in the NAT and PAC regions are anticipated in WATRS as well. There should be expected efficiencies through reduced airspace complexity, increased flight levels, and fewer altitude changes with crossing traffic.

Operators can expect increased performance due to greater airspace capacity eliminating current restrictions to desired airspace. Operators can also expect increased aircraft performance and decreased delays due to improved airspace efficiency. Specific benefits cited by aircraft operators are:

- Decreased flight delays
- Improved access to desired flight levels
- Reduced average flight times
- Increased availability of step climbs
- Increased likelihood of receiving a clearance for weather deviations
- Seamless, transparent, and harmonious operations between the NAT and WATRS regions
- Consistent procedural environment throughout the entire flight
- Reduced impact of adverse weather by permitting aircraft deviations to other airways without any efficiency loss.

Implementation of RVSM in WATRS should result in increased under

satisfaction. The benefits described in this section are compelling in number and operational impact. These benefits are also significant in that they are enjoyed both by air traffic service providers and aircraft operators.

TCAS II Version 7 is also included in this rule as described in a previous section. There is no economic impact to operators upgrading to TCAS II Version 7 because many destination countries served by U.S. air carriers already require this equipment.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Operators that met the Small Business Administration (SBA) small entity criteria were extracted from the 44-day traffic sample of enhanced Traffic Management System (ETMS) data. These operators were cross-referenced with the Central Monitoring Agency (CMA) and the Asia Pacific Approvals and Monitoring Organization (APARMO) databases to determine if they operated any RVSM-approved aircraft. The small entity operators with RVSM-approved aircraft were not considered further in this impact determination.

The list of potential small entity operators, taken from the traffic sample, was used to identify six operators currently reporting financial data to the FAA Bureau of Transportation Statistics. Revenue information for these small entities for year 1999 was obtained from the Air Carrier Financial Statistics Quarterly. The operators were then ranked with respect to their total operating revenue. Using this financial data, the impact threshold of $305,540.00 was determined for the six small entity operators. The impact threshold, which is calculated as 1% of the 1999 median impacted small business annual revenues, was compared to the cost of compliance.

Research of operators in WATRS has revealed that implementation of RVSM in WATRS would impact only one small entity operator. Moreover, the costs of implementing RVSM are not mandated by the FAA. These costs will be voluntarily incurred by those small operators who wish to participate in the RVSM program in WATRS. The FAA, therefore, concludes that a substantial number of small entity operators would not be significantly affected by the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

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, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

The reporting and record keeping requirements associated with this rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers 2120–0026. The FAA believes that this rule does not impose any additional record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. In Appendix G, amend section 2 by revising paragraph (g) and adding a new paragraph (h) and by revising section 8 to read as follows:

Appendix G to Part 91—Operations In Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 2. Aircraft Approval

* * * * *

(g) Traffic alert and collision avoidance system compatibility with RVSM operations: all aircraft. After March 31, 2002, unless otherwise authorized by the FAA, if you operate an aircraft that is equipped with TCAS II in RVSM airspace, it must be a TCAS II that meets TSO C–119b (version 7.0), or a later version.

(h) If the FAA finds that the applicant's aircraft comply with this section, we will notify the applicant in writing.

Section 8. Airspace Designation

(a) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestrom FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic. RVSM may be effective in the Minimum Navigation Performance Specifications (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace between FL 285 and FL 420 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

(b) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, Ujung Pandang, and Vancouver.

(c) RVSM may be applied in the New York FIR portion of the West Atlantic Route System (WATRS). The area is defined as beginning at a point 38°30′N/60°00′W direct to 38°30′N/69°15′W direct to 38°20′N/69°57′W direct to 37°31′N/71°41′W direct to 37°13′N/72°40′W direct to 35°05′N/72°40′W direct to 34°54′N/72°57′W direct to 34°29′N/73°34′W direct to 34°33′N/73°41′W direct to 34°19′N/74°02′W direct to 34°14′N/73°57′W direct to 32°12′N/76°49′W direct to 32°20′N/77°00′W direct to 28°08′N/77°00′W direct to 27°50′N/76°32′W direct to 27°50′N/74°50′W direct to 25°00′N/73°21′W direct to 25°00′05″N/69°13′06″W direct to 25°00′N/69°07′W direct to 23°30′N/68°40′W direct to 23°30′N/60°00′W to the point of beginning.

Issued in Washington, DC, on December 6, 2000.

Ava L. Mims,

Acting Director, Flight Standards Service.

[FR Doc. 00–31687 Filed 12–15–00; 8:45 am]

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Federal Register

Monday,
December 18, 2000

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

FAR/JAR Harmonization Actions; Revisions to Requirements Concerning Airplane Operating Limitations and the Content of Airplane Flight Manuals for Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2000–8511; Notice No. 00–17]

RIN 2120–AG92

FAR/JAR Harmonization Actions; Revisions to Requirements Concerning Airplane Operating Limitations and the Content of Airplane Flight Manuals for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposed to amend the airworthiness standards for transport category airplanes concerning airplane operating limitations and the content of airplane flight manuals. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirement of Europe, without affecting current industry design practices.

DATES: Send your comments on or before February 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8511 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2000–8511.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address; *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light on the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone; 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the *GPO's* web page at *http://www.access.gpo.gov/nara.*

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, ''Notice of Proposed Rulemaking Distribution System,'' which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task area. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would ''envelope'' the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested a number of editorial changes, which have been incorporated into this RPRN.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend six sections of the regulations concerning transport category airplane operating limitations and the content of airplane flight manuals (AFM). The six proposed changes are described separately below.

Change 1: New § 25.1516, ''Other Speed Limitations''

What Is the Underlying Safety Issue Addressed by the Current Standards?

There may be speeds above which it is unsafe to extend devices such as ram air turbines, thrust reversers, and landing lights into the air stream, or to open windows or doors. The current standards require that speed limitations must be established and made available to the flightcrew to ensure safe operation.

What Are the Current 14 CFR and JAR Standards?

Currently, the FAA relies on § 25.1503 (''Airspeed limitations: general'') and § 25.1533 (''Additional operating limitations'') as the means to fulfill the underlying safety issue. These two sections mandate speed limitations. Additionally, the text of paragraph (a) of § 25.1501 [amendment 25–42 (43 FR 2323, January 16, 1978)] states:

''§ 25.1501 Operating Limitations and Information—General.

(a) Each operating limitation specified in §§ 25.1503 through 25.1533, and other limitations and information necessary for safe operation, must be established.''

However, JAR–25 (Change 14, Orange Paper 96/1) contains an additional specific paragraph 25.1516 that states:

''JAR 25X1516 Other speed limitations

Any other limitation associated with speed must be established (See also ACJ 25X1516.)''

What Are the Differences in the Standards and What Do Those Differences Result In?

Part 25 does not have an explicit requirement to mandate that any other limitation associated with speed be established, while JAR–25 does. There are no practical differences resulting from the difference in the standards, however. Currently, applicants seeking certification of transport airplane designs by both the FAA and JAA must establish all limitations associated with speed.

What, If Any, Are the Differences in the Means of Compliance?

There are no differences between part 25 and JAR–25 in the means of compliance with the addressed requirement.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising part 25 to adopt the text of JAR 25X1516 as new § 25.1516. This proposed action would codify current FAA policy.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the underlying safety issue by requiring that airspeed limitations be established for devices that can open into the air stream in flight. With the addition of this standard, part 25 will have one explicit requirement that applicants establish all limitations associated with speed.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA does not consider that any additional advisory material is needed. Advisory Circular (AC) 25.1581–1, ''Airplane Flight Manual,'' dated July 14, 1997, provides adequate guidance related to the issue addressed by this proposed rulemaking. The advisory material will be fully harmonized when JAA's Advisory Material Joint (AMJ) 25.1581–1 is published.

Change 2: § 25.1527, ''Maximum Operating Altitude''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Operation of a transport category airplane outside of the environmental envelope established for the airplane may be unsafe. Therefore, the boundaries of that envelope must be established to ensure safe operations. Section 25.1527 requires that such boundaries be established.

What Are the Current 15 CFR and JAR Standards?

The current text of 14 CFR 25.1527 is:

''25.1527 Maximum operating altitude.

The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.''

The current text of JAR 25.1527 (Change 14, Orange Paper 96/1) is:

''JAR 25.1527 Ambient air temperature and operating altitude.

The extremes of the ambient air temperature and operating altitude for which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.''

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.1527 requires that only the maximum altitude portion of the environmental envelope be established. However, JAR 25.1527 requires that both the *minimum* and *maximum* altitudes and ambient temperatures be established. Although this difference exists, the FAA's policy of applying § 25.1527 is consistent with JAR 25.1527. This is evidenced by the compliance method described in FAA AC 25.1581–1. However, the FAA must rely on the general provisions of § 25.1501(a) (''* * * *other limitations and information necessary for safe operation must be established*'') for its regulatory basis.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in their application or means of compliance. As stated previously, the FAA relies on both the general provisions of § 25.1501(a) and the guidance in AC 25.1581–1 to apply the requirement.

Currently, there is no relevant JAA advisory material. However, the JAA has advised the FAA that it soon will be issuing AMJ 25.1581, which will contain material harmonized with that in AC 25.1581–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1527 to adopt the language currently in JAR 25.1527. This proposed action would codify current FAA policy and practice.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standards Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 3: § 25.1583(c), ''Operating Limitations/Weight and Loading Distribution''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.1583 (as well as JAR 25.1583) currently requires that the limitations established under §§ 25.1501 through 25.1533 be provided in the AFM. To ensure safe operation, any limitations established for the airplane must be made known to the flightcrew. This is accomplished through instrument markings, placards, and the information provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1853(c) [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

''§ 25.1583 Operating limitations.

* * * (c) *Weight and loading distribution.* The weight and center of gravity limits required by §§ 25.25 and 25.27 must be furnished in the Airplane Flight Manual. All of the following information must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight as defined in accordance with § 25.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one center of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate center of gravity range.''

The current text of JAR 25.1583(c) (Change 14, Orange Paper 96/1) is:

''JAR 25.1583 Operating limitations.

* * * (c) *Weight and loading distribution.* The weight and centre of gravity limitations established under JAR 25.1519 must be furnished in the aeroplane Flight Manual. All the following information, including weight distribution limitations established under JAR 25.1519, must be presented either in the aeroplane Flight Manual or in a separate weight and balance control and loading document which is incorporated by reference in the aeroplane Flight Manual [see ACJ 25.1583(c)];

(1) The condition of the aeroplane and the items included in the empty weight as defined in accordance with JAR 25.29.

(2) Loading instructions necessary to ensure loading of the aeroplane within the weight and centre of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one centre of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate centre of gravity range.''

What Are the Differences in the Standards and What Do Those Differences Result In?

There are no practical differences in the application of the two standards. However, the references to other standards that appear in JAR 25.1583(c) are more exact than those that appear in § 25.1583(c). The standards referenced are:

Section No.	Title of section*
25.23	Load distribution limits.
25.25	Weight limits.
25.27	Center of gravity limits.
25.1519	Weight, center of gravity, and weight distribution.

*The title of each section is the same in both part 25 and JAR–25.

JAR 25.1583(c) requires that the operating limitations established under JAR 25.1519 be provided in the AFM. JAR 25.1519 then requires that weight, center of gravity, and weight distribution limitations, ''including those established under *JAR 25.23 to JAR 25.27*,'' be established as operating limitations.

On the other hand, § 25.1583(c) requires that the weight and center of gravity limitations required by *§§ 25.25 and 25.27* must be provided in the AFM. Like its counterpart JAR standard, § 25.1519 requires that weight, center of gravity, and weight distribution limitations established under *§§ 25.23 and 25.27* be established as operating limitations.

Thus, instead of referencing § 25.1519, the requirements of § 25.1583(c) specifically refer to the weight and center of gravity limitations determined under §§ 25.25 and 25.27. This mistakenly excludes any operating limitations established under § 25.23.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in their application or means of compliance. The FAA's policy of applying § 25.1583 is consistent with JAR 25.1583. The FAA relies on the general provisions of § 25.1501(a), and the guidance material in AC 25.1581–1 to apply the same requirement.

The JAA has a current Advisory Circular Joint (ACJ) 25.1583 that is relevant and provides some guidance on complying with the standard. However, the JAA has advised the FAA that it soon will be issuing AMJ 25.1581, which will contain guidance material harmonized with that in AC 25.1581–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1583(c) to adopt the language currently in JAR 25.1583(c). This proposed action would codify current FAA policy.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 4: § 25.1583(f), ''Operating Limitations/Altitudes''

What Is the Underlying Safety Issue Addressed by the Current Standards?

As discussed previously, § 25.1583 (as well as JAR 25.1583) currently requires that the limitations established under §§ 25.1501 through 25.1533 be provided in the AFM. To ensure safe operation, any limitations established for the airplane must be made known to the flightcrew. This is accomplished through instrument markings, placards, and the information provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1583(f) [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

''25.1583 Operating limitations.

* * * (f) *Altitudes.* The altitude established under § 25.1527.''

The current text of JAR 25.1583(f) (Change 14, Orange Paper 96/1) is:

''JAR 25.1583 Operating limitations.

* * * (f) *Ambient air temperatures and operating altitudes.* The extremes of the ambient air temperatures and operating altitudes established under JAR 25.1527 and an explanation of the limiting factors must be furnished.''

What Are the Differences in the Standards and What Do Those Differences Result In?

Consistent with § 25.1527 (refer to previous discussion), § 25.1583(f) requires that only the maximum altitude portion of the environmental envelop be established. Consistent with JAR 25.1527, JAR 25.1583(f) requires that the limitations relative to both the *minimum* and *maximum* altitudes and ambient temperatures be established. Although the explicit standards are different, there are no differences in their application or means of compliance. The FAA's policy of applying § 25.1583(f) is consistent with JAR 25.1583(f). This is evidenced by the compliance method described in FAA AC 25.1581–1. However, the FAA must rely on the general provisions of § 25.1501(a) for its regulatory basis.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance. As stated above, the FAA relies on the general provisions of § 25.1501(a) and the guidance material in AC 25.1581–1 to apply the same requirement.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1583(f) to adopt the language currently in JAR 25.1583(f). This proposed action would codify current FAA policy.

The current requirement in JAR 25.1583(f) for an explanation of the limiting factors would not be included in the revised § 25.1583(f), however, as this does not represent current practice and the FAA considers it unnecessary for safety.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner. It would simply codify current FAA policy and application of the regulations.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practices, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 5: § 25.1585, ''Operating Procedures''

What Is the Underlying Safety Issue Addressed by the Current Standards?

The primary purpose of the AFM is to provide an authoritative and approved source of information that is considered necessary for safely operating the airplane. Consistent with this purpose, § 25.1585 requires that the AFM must provide those operating procedures related to airworthiness and necessary for safe operation, including those procedures that may be unique to the specific type of airplane.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1585 is:

''§ 25.1585 Operating procedures.

(a) Information and instructions regarding the peculiarities of normal operations (including starting and warming the engines, taxiing, operation of wing flaps, landing gear, and the automatic pilot) must be furnished, together with recommended procedures for—

(1) Engine failure (including minimum speeds, trim, operation of the remaining engines, and operation of flaps);

(2) Stopping the rotation of propellers in flight;

(3) Restarting turbine engines in flight (including the effects of altitude);

(4) Fire, decompression, and similar emergencies;

(5) Ditching [including the procedures based on the requirements of §§ 25.801, 25.807(d), 25.1411, and 25.1415(a) through (e)];

(6) Use of ice protection equipment;

(7) Use of fuel jettisoning equipment, including any operating precautions relevant to the use of the system;

(8) Operation in turbulence for turbine powered airplanes (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(9) Restoring a deployed thrust reverser intended for ground operation only to the forward thrust position in flight or continuing flight and landing with the thrust reverser in any position except forward thrust; and

(10) Disconnecting the battery from its charging source, if compliance is shown with § 25.1353(c)(6)(ii) or (c)(6)(iii).

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 25.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) The buffet onset envelopes, determined under § 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

(d) Information must be furnished which indicates that when the fuel quantity indicator reads ''zero'' in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.''

The current text of JAR 25.1585 (Change 14, Orange Paper 96/1) is:

''JAR 25.1585 Operating procedures.

(a) Information and instructions regarding operating procedures must be furnished [see ACJ 25.1585(a)] in substantial accord with the categories described below—

(1) Emergency procedures which are concerned with foreseeable but unusual situations in which immediate and precise action by the crew, as detailed in the recommended procedures, may be expected substantially to reduce the risk of catastrophe.

(2) Other procedures peculiar to the particular type or model encountered in connection with routine operations including malfunction cases and failure conditions, involving the use of special systems and/or the alternative use of regular systems not considered as emergency procedures.

(b) Information or procedures not directly related to airworthiness or not under the control of the crew, must not be included, nor must any procedure which is accepted as basic airmanship.

(c) The buffet onset envelopes, determined under JAR 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the aeroplane is normally loaded during cruise if corrections for the effect of different centre of gravity locations are furnished. [See ACJ 25.1585(c).]

(d) Information must be furnished which indicates that when the fuel quantity indicator reads ''zero'' in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.''

What Are the Differences in the Standards and What Do Those Differences Result In?

There are two differences between the standards. First, the JAR standard does not include the text of current § 25.1585(b), which requires including information in the AFM concerning each operating condition in which the fuel system independence is necessary for safety, and instructions for placing the rule system in a configuration used to show compliance with § 25.953 (''Fuel system independence''). Lack of such information may compromise the intent of the rules regarding fuel system independence. On this specific issue, the part 25 standard is ''more stringent'' than the JAR standard. (As discussed later, the JAA intends to revise JAR 25.1585 to add this requirement.)

Second, the text of JAR 25.1585(a) and (b) essentially ''updates'' the requirements of § 25.1585(a) to better reflect current policy, practices, and interpretations.

These differences do not necessarily entail any substantial differences in the technical requirements for including procedural information in the AFM. If differences in practice have arisen, they may have resulted more from differences in the means of compliance (and interpretation). Harmonizing the relevant guidance material (*i.e.,* FAA's AC 25.1581–1 and JAA's soon-to-be published AMJ 25.1581) will reduce the potential for such differences in the future.

What, If Any, Are the Differences in the Means of Compliance?

As one means to demonstrate compliance with § 25.1585, applicants have relied on the guidance material related to the operating procedures section of the AFM that is contained in AC 25.1581–1. The JAA has provided relevant guidance in ACJ's 25.1585(a), 25.1585(c), and 25.251(e). Although there are differences between the texts of the FAA AC and the JAA ACJ's, both authorities agree that the FAA AC represents a harmonized text. The JAA is currently in the process of revising its guidance and will soon publish a new AMJ 25.1581, which will be harmonized with the FAA's AC 25.1581–1.

What Is the Proposed Action?

This action would revise § 25.1585 to incorporate the text of JAR 25.1585. The current text of § 25.1585(b) would be retained, but it would be redesignated as § 25.1585(c). [The JAA intends to revise JAR 25.1585 to incorporate these same requirements, and will designate them as JAR 25.1585(c).] The incorporated text would be revised editorially to simplify it and make it better reflect current practices. (The JAA intends to make these same editorial revisions to JAR 25.1585.)

Although the text of the current § 25.1585(a) could be considered ''more stringent'' because it is more specific than the JAR as to the procedures that must be furnished in the AFM, it is considered outdated and not completely consistent with current practices. Additionally, some of the mandated procedures are no longer appropriate and other important procedures are not included. The proposed standard would provide a better description of what types of procedures are required to be in the AFM, the specifics of which will depend on the particular design developed by the applicant (i.e., a performance-based requirement).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by requiring information and procedures necessary for airworthiness and operational safety to be furnished in the AFM.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and may increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to the Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA did not consider any option other than harmonizing this item with the JAR. The JAR 25.1585(a) standard is considered to be closer to current practices than the manner in which § 25.1585(a) is actually applied. The

FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

Change 6: § 25.1587, ''Performance Information''

What Is the Underlying Safety Issue Addressed by the Current Standards?

The primary purpose of the AFM is to provide an authoritative and approved source of information considered necessary for safely operating the airplane. Consistent with this purpose, § 25.1587 requires that performance information related to airworthiness and necessary for safe operation must be provided in the AFM.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1587 [amendment 25–72 (55 FR 29787, July 20, 1990)] is:

''§ 25.1587 Performance information.

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 25.1303(a)(1).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information.

(2) V_S determined in accordance with § 25.103.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101(f), (g) and (h) that are related to the limitations and information required by § 25.1533 and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane.''

The current text of JAR 25.1587 (Change 14, Orange Paper 96/1) is:

''JAR 25.1587 Performance information.

''(a) *Not required for JAR–25.*

(b) Each aeroplane Flight Manual must contain the performance information computed under the applicable provisions of this JAR–25 (including JAR 25.115, 25.123, and 25.125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the aeroplane, and must contain the following:

(1) The condition of power, configuration, speeds and the procedures for handling the aeroplane and any system having a significant effect on performance upon which the performance graphs are based must be stated in each case. (See ACJ 25.1587(b)(1).)

(2) *Not required for JAR–25 as this sub-paragraph is covered by the opening sentence of sub-paragraph (b).*

(3) the following gross performance information (determined by extrapolation and computed for the range of weights between the maximum landing weight and maximum takeoff weight) must be provided.

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101 (f) and (g) that are related to the limitations and information required by JAR 25.1533 and by this paragraph must be stated in the form of guidance material, including any relevant limitation or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the aeroplane.

(6) Corrections to indicated values of airspeed, altitude and outside air temperature.

(7) An explanation of operational landing runway length factors included in the presentation of the landing distance, if appropriate. (See ACJ 25.1587(b)(7).)''

What Are the Differences in the Standards and What Do Those Differences Result In?

There are several differences between the standards:

- Part 25 does not include the text of JAR 25.1587(b)(6) or (7).
- The JAR does not include the text of § 25.1587(a) and (b)(2).
- The JAR contains some wording differences in the text that better reflect current interpretations and practices.

These differences do not necessarily entail any substantial differences in technical requirements for including performance information in the AFM. If differences in practice have arisen, they would have resulted more from differences in the means of compliance (and interpretation). Harmonizing the relevant guidance material (i.e., FAA's AC 25.1581–1 and JAA's soon-to-be-published AMJ 25.1581) will reduce the potential for such differences in the future.

What, If Any, Are the Differences in the Means of Compliance?

As one means to demonstrate compliance with § 25.1585, applicants have relied on the guidance material related to the operating procedures section of the AFM that is contained in AC 25.1581–1. The JAA has provided relevant guidance in ACJ's 25.1587(b)(1) and ACJ 25.1587(b)(7). Although there are differences between the texts of the FAA AC and the JAA ACJ's, both authorities agree that the FAA AC represents a harmonized text. The JAA is currently in the process of revising its guidance and will soon publish a new AMJ 25.1581, which will be harmonized with the FAA's AC 25.158–1.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising § 25.1587 to adopt portions of the text of JAR 25.1587. This proposed action would codify current FAA policy.

In general, where the standards are different, the JAR standard properly reflects current practices and is proposed as the harmonized standard. In areas where there is a requirement in one standard that does not appear in the other standard, that requirement has been carried over into the proposed harmonized standard. Some minor non-substantive editorial changes also would be included in the proposed standard.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by requiring performance information necessary for airworthiness and operational safety to be furnished in the AFM.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level and man increase the level of safety relative to the current regulations.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry design practices.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. However, since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA considers that current FAA advisory material is adequate. The advisory material related to this regulation will be fully harmonized when JAA publishes AMJ 25.1581.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 as amended requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no more than minimal costs, and that is not a ''a significant regulatory action'' under section 3(f) of Executive Order 12866. This proposal would not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and imposes no unfunded mandates on state, local, or tribal governments, or the private sector.

Because there are no more than minimal costs associated with this proposal, it does not warrant the preparation of a full economic evaluation for placement in the docket. The basis of this statement and for the above determinations is summarized in this section of the preamble. The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Currently, airplane manufacturers must satisfy both the requirements of 14 CFR part 25 standards and the European JAR certification standards to market transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the itnerest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create to the maximum possible extent a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization.

In this notice, the FAA proposes to amend six sections of the regulations concerning transport category airplane operating limitations and the content of airplane flight manuals (AFM). The six proposed changes are described separately below.

Change 1: New § 25.1516, ''Other Speed Limitations''

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA Advisory Circular (AC) 25.1581–1. They also would comply with the proposed new § 25.1516, which would be harmonized to existing JAR 25X1516, because § 25.1501 encompasses the requirements of the proposed new FAA rule.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1516 or JAR 25X1516 will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 2: § 25.1527, ''Maximum Operating Altitude''

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA AC 25.1581–1. They also would comply with the proposed amendment of § 25.1527 to harmonize to JAR 25.1527, because § 25.1501 encompasses the requirements of § 25.1527 as it is proposed to be amended.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1527 or JAR 25.1527 will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 3: § 25.1583(c), ''Operating Limitations/Weight and Loading Distribution''

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA Advisory Circular 25.1581–1. They also would comply with the proposed amendment of § 25.1583(c) that would harmonize it to the existing JAR 25.1583(c), because § 25.1501 encompasses § 25.1583(c) as it is proposed to be amended.

This change would amend § 25.1583(c) to eliminate its inclusion of direct references to § 25.25 and to § 25.27 and its concomitant omission of a direct reference to § 25.23. By amending § 25.1583(c) so that it refers directly to § 25.1519, which includes references to these three sections, they—§ 25.25, § 25.27, and § 25.23—would be incorporated into the scope of § 25.1583. Thus, all three sections would be referenced indirectly by § 25.1583(c) through its reference to § 25.1519.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1583(c) or JAR 25.1583(c) will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 4: § 25.1583(f), ''Operating Limitations/Altitudes''

U.S. manufacturers of part 25 airplanes comply now with § 25.1501 through the advice of FAA AC 25.1581–1. They also would comply with this proposed amendment that would harmonize § 25.1583(f) to the existing

JAR 25.1583(f), because § 25.1501 encompasses the requirements of § 25.1583(f) as it is proposed to be amended.

The FAA expects the result of this proposed harmonization action will be that compliance with either § 25.1583(f) or JAR 25.1583(f) will mean compliance with the other. Further, because proposed new JAA advisory material would be harmonized to FAA AC 25.1581–1, U.S. manufacturers would not need to change the means through which they comply with these harmonized rules.

Change 5: § 25.1585, ''Operating Procedures''

U.S. manufacturers of part 25 airplanes comply now with § 25.1585 which encompasses and exceeds the scope of existing JAR 25.1585. They also would comply with the proposed amendment to harmonize § 25.1585 to JAR 25.1585.

The part 25 requirement would be harmonized to the JAR because, with one exception, the content of the JAA rule better presents FAA's current policy, practices, and interpretations than does the content of the FAA rule. The single exception is the omission in JAR 25.1585 of an equivalent to § 25.1585(b). This paragraph requires information and instructions to be furnished toward compliance with § 25.953. The harmonized FAA/JAA standard would maintain this FAA requirement. Harmonization of related advisory material would be complete when JAA advisory material is harmonized to existing FAA advisory material.

The FAA expects that the result of this proposed harmonization action will be that compliance with either § 25.1585 or JAR 25.1585 will mean compliance with the other. Further, no reduction in the level of safety would result from this action. Neither the proposed harmonization of the rules, nor the harmonization of proposed associated JAA advisory material to the FAA advisory material would present U.S. manufacturers with any practical change in their procedures.

Change 6: § 25.1587, ''Performance Information''

U.S. manufacturers of part 25 airplanes comply now separately with existing § 25.1587 and JAR 25.1587, which differ in some particulars. This action would result in a harmonized FAA/JAA standard such that manufacturers' compliance with either rule would mean compliance with the other.

The harmonized standard would incorporate the requirements of § 25.1587(a) and of § 25.1587(b)(2), which now are lacking in the JAR. It also would incorporate the requirements of JAR 25.1587(b)(6) and of JAR 25.1587(b)(7), which now are lacking in part 25. Some minor non-substantive editorial changes also would be included in the proposed harmonized standard. Harmonization of related advisory material would be complete when JAA advisory material is harmonized to existing FAA advisory material.

The FAA expects that the result of this proposed harmonization action would be that compliance with either § 25.1587 or JAR 25.1587 will mean compliance with the other. Neither the proposed harmonization of the rules, nor the harmonization of proposed associated JAA advisory material to the FAA advisory material would present U.S. manufacturers with any practical change in their procedures.

Benefits and Costs of Proposed Changes

The effect of these proposed regulatory changes would be to improve the codification of current certification practice and no consequent substantive change either in practice or in costs of compliance would result. Thus, the FAA anticipates that minimal additional costs would be associated with compliance to this rule.

The FAA expects that these proposed changes would result in benefits in the form of cost savings received by affected manufacturers because they would be able to effect compliance with both part 25 and JAR requirements in a simpler and more direct fashion. Further, the FAA expects that the existing level of safety will be maintained.

The FAA has not attempted to quantify the benefits from cost savings that may accrue because of this rule beyond noting that while the savings from this rule may be small, they are part of a potentially large savings from the harmonization program. The FAA concludes that, because there is agreement among potentially affected airplane manufacturers that no costs and no more than minimal savings will result, further analysis is not required. The FAA requests that those who believe this action would result in a cost increase provide to the Docket their basis for such a belief.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), of 1980 as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons: First, the net economic effect of the proposed rule is minimal reduction of regulatory cost. Second, all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entry criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Based on these two reasons, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers

to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with that statute and policy, the FAA has assessed the potential effects of these six proposed harmonization actions and has determined that they would reduce trade barriers by eliminating the differences between FAA and JAA regulations.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Because this proposed rule does not contain a Federal, another governmental, or because this proposed rule does not contain a Federal, another governmental or a private sector mandate that exceeds $100 million in any year, the assessment requirements of the Act do not apply. Private sector mandate that exceeds $100 million in any year, the assessment requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Add new § 25.1516 to read as follows:

§ 25.1516 Other speed limitations.

Any other limitation associated with speed must be established.

3. Revise § 25.1527 to read as follows:

§ 25.1527 Maximum operating altitude.

The extremes of the ambient air temperature and operating altitude for which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.

4. Amend § 25.1583 by revising paragraphs (c) and (f) to read as follows:

§ 25.1583 Operating limitations.

* * * * *

(C) *Weight and loading distribution.* The weight and center of gravity limitations established under § 25.1519 must be furnished in the airplane Flight Manual. All of the following information, including the weight distribution limitations established § 25.1519, must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document that is incorporated by reference in the Airplane Flight Manual;

(1) The condition of the airplane and the items included in the empty weight as defined in accordance with § 25.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(3) If certification for more than one center of gravity range is requested, the appropriate limitations, with regard to weight and loading procedures, for each separate center of gravity range.

* * * * *

(f) *Ambient air temperatures and operating altitudes.* The extremes of the ambient air temperatures and operating altitudes established under § 25.1527 must be furnished.

* * * * *

5. Revise § 25.1585 to read as follows:

§ 25.1585 Operating procedures.

(a) Operating procedures must be furnished for—

(1) Normal procedures peculiar to the particular type or model encountered in connection with routine operations;

(2) Non-normal procedures for malfunction cases and failure conditions involving the use of special systems or the alternative use of regular systems; and

(3) Emergency procedures for foreseeable but unusual situations in which immediate and precise action by the crew may be expected to substantially reduce the risk of catastrophe.

(b) Information or procedures not directly related to airworthiness or not under the control of the crew, must not be included, nor must any procedure that is accepted as basic airmanship.

(c) Information identifying each operating condition in which the fuel system independence prescribed in § 25.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(d) The buffet onset envelopes, determined under § 25.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

(e) Information must be furnished that indicates that when the fuel quantity indicator reads ''zero'' in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(f) Information on the total quantity of usable fuel for each fuel tank must be furnished.

6. Revise § 25.1587 to read as follows:

§ 25.1587 Performance information.

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 25.1303(a)(1).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part (including §§ 25.115, 25,123, and 25,125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) In each case, the conditions of power, configuration, and speeds, and the procedures for handling the airplane and any system having a significant effect on the performance information.

(2) V_s determined in accordance with § 25.103.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing weight and the maximum takeoff weight):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under § 25.101 (f) and (g) that are related to the limitations and information required by § 25.1533 and by this paragraph in the form of guidance material, including any relevant limitations or information.

(5) Any explanation of significant or unusual flight or ground handling characteristics of the airplane.

(6) Corrections to indicated values of airspeed, altitude, and outside air temperature.

(7) An explanation of operational landing runway length factors included in the presentation of the landing distance, if appropriate.

Issued in Renton, Washington, on December 4, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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Pratt & Whitney; comments due by 12-26-00; published 10-25-00
Raytheon; comments due by 12-29-00; published 11-2-00
Class E airspace; comments due by 12-27-00; published 11-9-00

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Size and weight enforcement; certification; comments due by 12-27-00; published 9-28-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol; viticultural area designations:
California Coast, CA; comments due by 12-26-00; published 9-26-00

TREASURY DEPARTMENT
Comptroller of the Currency
Capital; leverage and risk-based capital and capital adequacy guidelines, capital maintenance, residual interests, etc.; comments due by 12-26-00; published 9-27-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Consolidated return regulations—
Agent for consolidated group; comments due by 12-26-00; published 9-26-00

TREASURY DEPARTMENT
Thrift Supervision Office
Capital; leverage and risk-based capital and captial adequacy guidelines, capital maintenance, residual interests, etc.; comments due by 12-26-00; published 9-27-00
Savings and loan holding companies:
Significant transactions or activities and capital

adequacy review; comments due by 12-26-00; published 10-27-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 128/P.L. 106–540
Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

S. 2796/P.L. 106–541
Water Resources Development Act of 2000 (Dec. 11, 2000; 114 Stat. 2572)

Last List December 11, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
500–End	(869–042–00028–5)	48.00	Jan. 1, 2000
11	(869–042–00029–3)	23.00	Jan. 1, 2000
12 Parts:			
1–199	(869–042–00030–7)	18.00	Jan. 1, 2000
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–042–00034–0)	26.00	Jan. 1, 2000
600–End	(869–042–00035–8)	53.00	Jan. 1, 2000
13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–042–00043–9)	45.00	Jan. 1, 2000
800–End	(869–042–00044–7)	26.00	Jan. 1, 2000
16 Parts:			
0–999	(869–042–00045–5)	33.00	Jan. 1, 2000
1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
17 Parts:			
1–199	(869–042–00048–0)	32.00	Apr. 1, 2000
200–239	(869–042–00049–8)	38.00	Apr. 1, 2000
240–End	(869–042–00050–1)	49.00	Apr. 1, 2000
18 Parts:			
1–399	(869–042–00051–0)	54.00	Apr. 1, 2000
400–End	(869–042–00052–8)	15.00	Apr. 1, 2000
19 Parts:			
1–140	(869–042–00053–6)	40.00	Apr. 1, 2000
141–199	(869–042–00054–4)	40.00	Apr. 1, 2000
200–End	(869–042–00055–2)	20.00	Apr. 1, 2000
20 Parts:			
1–399	(869–042–00056–1)	33.00	Apr. 1, 2000
400–499	(869–042–00057–9)	56.00	Apr. 1, 2000
500–End	(869–042–00058–7)	58.00	Apr. 1, 2000
21 Parts:			
1–99	(869–042–00059–5)	26.00	Apr. 1, 2000
100–169	(869–042–00060–9)	30.00	Apr. 1, 2000
170–199	(869–042–00061–7)	29.00	Apr. 1, 2000
200–299	(869–042–00062–5)	13.00	Apr. 1, 2000
300–499	(869–042–00063–3)	20.00	Apr. 1, 2000
500–599	(869–042–00064–1)	31.00	Apr. 1, 2000
600–799	(869–038–00065–0)	10.00	Apr. 1, 2000
800–1299	(869–042–00066–8)	38.00	Apr. 1, 2000
1300–End	(869–042–00067–6)	15.00	Apr. 1, 2000
22 Parts:			
1–299	(869–042–00068–4)	54.00	Apr. 1, 2000
300–End	(869–042–00069–2)	31.00	Apr. 1, 2000
23	(869–042–00070–6)	29.00	Apr. 1, 2000
24 Parts:			
0–199	(869–042–00071–4)	40.00	Apr. 1, 2000
200–499	(869–042–00072–2)	37.00	Apr. 1, 2000
500–699	(869–042–00073–1)	20.00	Apr. 1, 2000
700–1699	(869–042–00074–9)	46.00	Apr. 1, 2000
1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
25	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1–1.60	(869–042–00077–3)	31.00	Apr. 1, 2000
§§ 1.61–1.169	(869–042–00078–1)	56.00	Apr. 1, 2000
§§ 1.170–1.300	(869–042–00079–0)	38.00	Apr. 1, 2000
§§ 1.301–1.400	(869–042–00080–3)	29.00	Apr. 1, 2000
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501–1.640	(869–042–00083–8)	32.00	Apr. 1, 2000
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
2–29	(869–042–00089–7)	45.00	Apr. 1, 2000
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–042–00093–5)	43.00	Apr. 1, 2000
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

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200–End	(869–042–00097–8)	18.00	Apr. 1, 2000
28 Parts:			
0-42	(869–042–00098–6)	43.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
1900–1910 (§§ 1900 to 1910.999)	(869–042–00104–4)	46.00	[6]July 1, 2000
1910 (§§ 1910.1000 to end)	(869–042–00105–2)	28.00	[6]July 1, 2000
1911–1925	(869–042–00106–1)	20.00	July 1, 2000
1926	(869–042–00107–9)	30.00	[6]July 1, 2000
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
1–199	(869–042–00109–5)	38.00	July 1, 2000
200–699	(869–042–00110–9)	33.00	July 1, 2000
700–End	(869–042–00111–7)	39.00	July 1, 2000
31 Parts:			
0–199	(869–042–00112–5)	23.00	July 1, 2000
200–End	(869–042–00113–3)	53.00	July 1, 2000
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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1–190	(869–042–00114–1)	51.00	July 1, 2000
191–399	(869–042–00115–0)	62.00	July 1, 2000
400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–042–00118–4)	31.00	July 1, 2000
800–End	(869–042–00119–2)	32.00	July 1, 2000
33 Parts:			
1–124	(869–042–00120–6)	35.00	July 1, 2000
125–199	(869–042–00121–4)	45.00	July 1, 2000
200–End	(869–042–00122–5)	36.00	July 1, 2000
34 Parts:			
1–299	(869–042–00123–1)	31.00	July 1, 2000
300–399	(869–042–00124–9)	28.00	July 1, 2000
400–End	(869–042–00125–7)	54.00	July 1, 2000
35	(869–042–00126–5)	10.00	July 1, 2000
36 Parts			
1–199	(869–042–00127–3)	24.00	July 1, 2000
200–299	(869–042–00128–1)	24.00	July 1, 2000
300–End	(869–042–00129–0)	43.00	July 1, 2000
37	(869–042–00130–3)	32.00	July 1, 2000
38 Parts:			
0–17	(869–042–00131–1)	40.00	July 1, 2000
18–End	(869–042–00132–0)	47.00	July 1, 2000
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–042–00134–6)	37.00	July 1, 2000
50–51	(869–042–00135–4)	28.00	July 1, 2000
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
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72–80	(869–042–00144–3)	47.00	July 1, 2000
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136–149	(869–042–00148–6)	42.00	July 1, 2000
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–042–00151–6)	36.00	July 1, 2000
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–042–00153–2)	29.00	July 1, 2000
400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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1–100	(869–042–00158–3)	15.00	July 1, 2000
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102–200	(869–042–00160–5)	21.00	July 1, 2000
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1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
*20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
*80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
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7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
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1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..